

TITLE 4A

- CHAPTER 1. GENERAL RULES AND DEPARTMENT ORGANIZATION**
- CHAPTER 2. APPEALS, DISCIPLINE & SEPERATIONS**
- CHAPTER 3. CLADDIFICATION, SERVICES & COMPENSATION**
- CHAPTER 4. SELECTION & APPOINTMENT**
- CHAPTER 5. VETERANS & DISABLE VETERANS PREFERENCE**
- CHAPTER 6. LEAVE, HOURS OF WORK & EMPLOYMENT DEVELOPMENT**
- CHAPTER 7. EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION**
- CHAPTER 8. LAYOFFS**
- CHAPTER 9. POLITICAL SUBDIVISIONS**
- CHAPTER 10. VIOLATIONS & PENALTIES**

CHAPTER 1. GENERAL RULES AND DEPARTMENT ORGANIZATION

4A:1-1.1 Purpose

The purpose of these rules is to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with Title 11A, New Jersey Statutes. See N.J.S.A. 11A:1-2.

4A:1-1.2 Scope, applicability and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with these rules.

(b) These rules shall apply only to the career service unless otherwise specified.

(c) These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. The Commissioner or the Board may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purpose of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the rules shall not be affected by such determination.

4A:1-1.3 Definitions

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

"Appointing authority" means a person or group of persons having power of appointment or removal.

"Appointment" means the offer, acceptance and commencement of employment.

"Base salary" means an employee's rate of pay exclusive of any additional payments or allowances.

"Board" means the Merit System Board.

"Career Service" means those positions and job titles subject to the tenure provisions of Title 11A, New Jersey Statutes.

"Certification" means a list of names presented to an appointing authority for regular appointment.

"Class code" means a designation assigned to job titles in State Service with ranking based upon an evaluation of job content.

"Closing date for examination" means the date by which an applicant for an examination must meet all of the requirements contained in the examination announcement.

"Commissioner" means the Commissioner of Personnel.

"Days" means calendar days unless otherwise specified.

"Demotion" means, in local service, a reduction in title or scale of compensation, and in State service, a reduction in class code.

"Department" in local service, where not otherwise defined by statute, means the largest type of organizational unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organizational unit for the purpose of administering the political subdivision. In State service, "department" means a principal executive department of State government.

"Disposition" means the written report of actions taken by an appointing authority regarding a certification.

"Eligible list" means a roster compiled or approved by the Department of Personnel of persons who are qualified for employment or reemployment.

"Filing date for examination" means the date by which an application for an examination must be received in the office designated in the announcement. When mailed, the filing date is the date by which a properly addressed application must be postmarked.

"Fine" means a disciplinary penalty which requires the payment of money or the performance of service without pay or at reduced pay.

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

...

"Immediate family" means an employee's spouse, domestic partner (see section 4 of P.L. 2003, c. 246), child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household.

...

"Layoff" means the separation of a permanent employee from employment for reasons of economy or efficiency or other related reasons and not for disciplinary reasons.

"Local service" means employment in any political subdivision operating under Title 11A, New Jersey statutes.

"Open competitive examination" means a test open to members of the public who meet the prescribed requirements for admission.

"Part time employee" means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

"Permanent employee" means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

"Position" means the assignment of specific duties and responsibilities requiring the employment of one person.

"Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

"Promotional examination" means a test open to permanent employees who meet the prescribed requirements for admission.

"Provisional appointment" (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

"Regular appointment" (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

"Removal" means termination of a permanent employee from employment for disciplinary reasons.

"Senior executive service" means positions in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

"State service" means employment for the State of New Jersey.

"Suspension" means temporary separation from employment for disciplinary reasons.

"Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

"Title scope" means a defined group of job titles used as a factor in determining eligibility for promotional examinations. Title scope may also include educational, experience and other specific requirements.

"Title series" means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

"Unclassified service" means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

"Unit scope" means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

"Working test period" means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to > N.J.A.C. 1:30-3.6.

4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;

2. Information on specific educational or medical qualifications required for employment;

3. Final orders of the Commissioner or Board; and

4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) See N.J.A.C. 4A:4-2.16 concerning examination records.

4A:1-3.1 General provisions

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;
2. Merit System Board; and
3. Such subdivisions as the Commissioner may deem necessary.

4A:1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;
2. Serve as principal executive and request officer of the Department;
3. Maintain a management information system to implement Title 11A, New Jersey Statutes;
4. Establish necessary programs and policies for the State and local service;
5. Assist the Governor in personnel and labor relations;
6. Render final administrative decisions on appeals of classification, salary, layoff rights and State noncontractual grievances;
7. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;
8. Make required reports to the Governor and Legislature;
9. Approve appointments in the State and local service; and
10. Perform such other duties as prescribed by law and these rules.

4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;

2. Render final administrative decisions on appeals and on other matters referred by the Commissioner, except for those matters listed in > N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;

3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;

4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity; and

5. Perform such other duties as prescribed by law and these rules.

4A:1-4.1 Delegation to appointing authorities

(a) The Commissioner may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;
2. Announcing examinations and collecting applications;
3. Administering examinations prepared by the Department of Personnel;
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles; and
6. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the Commissioner. Appointing authority employees in carrying out delegated functions are also responsible to the Department of Personnel in performing such functions. The delegation memorandum shall contain:

1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The Department of Personnel representative who will have primary responsibility for supervision of the delegation;

4. The duration of the delegation, which in no event shall exceed three years, but may be renewed; and

5. Provisions for appropriate notice advising of the delegation and stating the name, address and telephone number of the representative of the appointing authority and Department of Personnel employee to be contacted in case of complaints.

(c) Department of Personnel staff may be assigned to assist in performing the delegated functions.

(d) The Commissioner may cancel, modify or limit the delegation order at any time.

(e) The following functions may not be delegated:

1. The construction of an examination;
2. Appeal decisions of the Department, Commissioner or Board; and
3. A function of the Board.

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials and facilities after offset by savings effected by the delegation.

(g) The Department of Personnel will conduct appropriate audits of delegated functions.

4A:1-4.2 Consolidation State service

(a) The Commissioner, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:

1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the Commissioner may transfer necessary employees, positions, funding and equipment to the Department of Personnel from other State departments.

4A:1-4.3 Pilot programs

(a) The Commissioner may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and these rules.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the Commissioner and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A, New Jersey Statutes;
5. A summary of appointing authority consultations with negotiations representatives;
6. Evaluation criteria;
7. A statement identifying the sections, if any, of these rules or of Title 11A, New Jersey Statutes with which the program is at variance; and
8. Such other information as required by the Commissioner.

(e) The Commissioner shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The Commissioner may accept, modify or reject the program and establish appropriate conditions.

4A:1-5.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"ADA" means the Americans with Disabilities Act, > 42 U.S.C.A. § 12101 et seq.

"Agency" means the New Jersey Department of Personnel.

"Designated decision maker" means the Commissioner of Personnel or his or her designee.

4A:1-5.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, > 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to > N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 4A:1-5. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator

New Jersey Department of Personnel

CN 317

Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, > N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

4A:1-5.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator

New Jersey Department of Personnel

CN 317

Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in > N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in > N.J.A.C. 4A:1-5.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, > N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

4A:1-5.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at > N.J.A.C. 4A:1-5.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person;
and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

4A:1-5.7 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____

Name of grievant: ____

Address of grievant: ____

Telephone number of grievant: ____

Name, address and telephone number

of alternate contact person: ____

Agency alleged to have denied access:

Department: ____

Division: ____

Bureau or office: ____

Location: ____

Incident or barrier: ____

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at > N.J.A.C. 4A:1-5.4.

4A:1-5.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.

CHAPTER 2. APPEALS, DISCIPLINE AND SEPARATIONS

4A:2-1.1 Filing of appeals

(a) All appeals to the Commissioner or Board shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law or these rules, or where the Commissioner or Board finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and

2. A party may review the file at the Department of Personnel during business hours.

(e) A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

4A:2-1.2 Stay and interim relief requests

(a) Upon the filing of an appeal, a party to the appeal may petition the Commissioner for a stay or other relief pending final decision of the matter.

(b) A request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) The following factors will be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted; and
4. The public interest.

(d) The filing of a petition for interim relief will not stay administrative proceedings or processes.

(e) Each party must serve copies of all materials submitted on all other parties.

(f) Following a final administrative decision by the Commissioner or the Board, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commissioner for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. See N.J. Court Rules 2:9-7.

(g) See N.J.A.C. 1:1-12.6 for interim relief rules on matters pending before the Office of Administrative Law.

4A:2-1.3 Adjournments

(a) Any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or federal court;
or

2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the Commissioner or Board may impose a fine or penalty.

(c) See N.J.A.C. 1:1-9.6 for Office of Administrative Law adjournment rules.

4A:2-1.4 Burden of proof

(a) In appeals concerning major disciplinary actions, > N.J.A.C. 4A:2-2.1 et seq., the burden of proof shall be on the appointing authority.

(b) In appeals concerning minor disciplinary actions, See N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) In all other Commissioner and Board appeals, the burden of proof shall be on the appellant.

4A:2-1.5 Remedies

(a) Seniority credit may be awarded in any successful appeal.

(b) Back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See N.J.A.C. 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Commissioner or Board or where the Board finds sufficient cause based on the particular case.

4A:2-1.6 Reconsideration of decisions

(a) Upon the receipt of a decision, a party to the appeal may petition the Commissioner or Board for reconsideration.

(b) A petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

(c) Each party must serve copies of all materials submitted on all other parties.

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1. Awards in State service (> N.J.A.C. 4A:6-6.10);

2. Classification (> N.J.A.C. 4A:3-3.9);
3. Discipline, major (> N.J.A.C. 4A:2-2.1 et seq.);
4. Discipline, minor (> N.J.A.C. 4A:2-3.1 et seq.);
5. Discrimination in State service (> N.J.A.C. 4A:7-3.2 through > 4A:7-3.4);
6. Employment list removal for medical reasons (> N.J.A.C. 4A:4-6.5);
7. Employment list removal for psychological reasons (> N.J.A.C. 4A:4-6.5);
8. Examinations (> N.J.A.C. 4A:4-6.1 et seq.);
9. Grievances (> N.J.A.C. 4A:2-3.1 et seq.);
10. Layoffs (> N.J.A.C. 4A:8-2.6);
11. Overtime in State service (> N.J.A.C. 4A:3-5.10 et seq.);
12. Performance Assessment Review in State service (> N.J.A.C. 4A:6-5.3);
13. Reprisals (> N.J.A.C. 4A:2-5.1 et seq.);
14. Resignations (> N.J.A.C. 4A:2-6.1 et seq.);
15. Salary (job reevaluation) in state service (> N.J.A.C. 4A:3-4.3);
16. Sick leave injury in State service (> N.J.A.C. 4A:6-1.7); and
17. Supplemental compensation on retirement in State service (> N.J.A.C. 4A:6-3.4).

(b) Any appeal not listed above must be filed in accordance with > N.J.A.C. 4A:2-1.1.

4A:2-2.1 Employees covered

(a) This subchapter applies only to permanent employees in the career service or a person serving a working test period.

(b) Appointing authorities may establish major discipline procedures for other employees.

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;
2. Disciplinary demotion;
3. Suspension or fine for more than five working days at any one time;
4. Suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more;
5. The last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year.

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in > N.J.A.C. 4A:7-1.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder; and
11. Other sufficient cause.

4A:2-2.4 Limitations on suspensions and fines

(a) No suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment. See N.J.A.C. 4A:2-2.7.

(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head.

(c) An appointing authority may only impose a fine as follows:

1. As a form of restitution;

2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or

3. Where an employee has agreed to a fine as a disciplinary option.

(d) An employee may pay a fine of more than five days salary in a lump sum or through installments. Unless otherwise agreed to by the employee, an installment may not be more than five percent of the gross salary per pay for a fine under \$500.00; 10 percent of gross salary per pay period for a fine between \$500.00 and \$1,000; or 15 percent of gross salary per pay period for a fine over \$1,000.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and (a)2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate

suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties.

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

4A:2-2.6 Hearings before the appointing authority

(a) The hearing shall be held before the appointing authority or its designated representative.

(b) The employee may be represented by an attorney or authorized union representative.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify, but an employee who does testify will be subject to cross-examination.

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that > N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in > N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) When a court has entered an order of forfeiture pursuant to > N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to the Department of Personnel.

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to > N.J.S.A. 2C:51-2, the appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under > N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under > N.J.S.A. 2C:51-2 but the court has not entered an order of forfeiture, the appointing authority may seek forfeiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of > N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other disciplinary charges, if any, as provided in (b)1 above.

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Board within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;

2. The employee's name, mailing address and telephone number; and

3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall not result in dismissal of the appeal, but shall delay processing of the appeal until the required information is provided, and may result in a reduced back pay award pursuant to > N.J.A.C. 4A:2-2.10(d)4.

4A:2-2.9 Board hearings

(a) Requests for a Board hearing will be reviewed and determined by the Commissioner or Commissioner's designee.

(b) Major discipline hearings will be heard by the Board or referred to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1 for OAL hearing procedures.

1. Where an employee has pled guilty to or been convicted of a crime or offense which is cause for forfeiture of employment under > N.J.S.A. 2C:51-2, but the court has not issued an order of forfeiture, the Board shall not refer the employee's appeal for a hearing regarding the applicability of > N.J.S.A. 2C:51-2 nor make a determination on that issue. See N.J.A.C. 4A:2-2.7.

2. Where a court has entered an order of forfeiture, and the appointing authority has so notified the employee, but the employee disputes whether an order of forfeiture was actually entered, the Board may make a determination on the issue of whether the order was actually entered. See N.J.A.C. 4A:2-2.7.

3. Notwithstanding (b)1 and 2 above, the Board may determine whether an individual must be discharged from a State or local government position due to a permanent disqualification from public employment based upon the prior conviction of a crime or offense involving or touching on a previously held public office or employment, provided, however, that the Attorney General or county prosecutor has not sought or received a court order waiving the disqualification provision. See N.J.S.A. 2C:51-2(d) and (e).

(c) The Board may adopt, reject or modify the recommended report and decision of an administrative law judge. Copies of all Board decisions shall be served personally or by regular mail upon the parties.

(d) The Board may reverse or modify the action of the appointing authority, except that removal shall not be substituted for a lesser penalty.

4A:2-2.10 Back pay, benefits and seniority

(a) Where a disciplinary penalty has been reversed, the Board shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

(b) Where a municipal police officer has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the officer shall receive back pay, benefits and seniority pursuant to > N.J.S.A. 40A:14-149.1 et seq.

(c) Where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated.

1. Such items shall not be awarded when the complaint or indictment is disposed of through Conditional Discharge, > N.J.S.A. 2C:36A-1, or Pre-Trial Intervention (PTI), > N.J.S.A. 2C:43-12 et seq.

2. Where disciplinary action has been taken following disposition of the complaint or indictment, such items shall not be awarded in case of removal. In case of suspension, where the employee has already been suspended for more than six months pending disposition of the complaint or indictment, the disciplinary suspension shall be applied against the period of indefinite suspension. The employee shall receive back pay

for the period of suspension beyond six months, but the appointing authority may for good cause deny back pay for the period beyond the disciplinary suspension up to a maximum of six months.

(d) Back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay and holiday premium pay.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

3. The award of back pay shall be reduced by the amount of money which was actually earned or could have been earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

4. The award of back pay is subject to reduction by any period of delay of the appeal proceedings caused on behalf of the employee.

5. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(e) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

(f) When the Board awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

(g) If settlement on an amount cannot be reached, either party may request, in writing, Board review of the outstanding issue. In a Board review:

1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and

2. The employee shall submit an affidavit setting forth all income received during the separation.

4A:2-2.11 Interest

(a) When the Commissioner or Board makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commissioner or Board; or

2. Where the Board finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with > N.J.A.C. 4A:2-2.10(d)2 and 3.

4A:2-2.12 Counsel fees

(a) The Merit System Board shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Board.

(b) When the Board awards counsel fees, the actual amount shall be settled by the parties whenever possible.

(c) Subject to the provisions of (d) and (e) below, the following fee ranges shall apply in determining counsel fees:

1. Associate in a law firm: \$100.00 to \$150.00 per hour;

2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: \$150.00 to \$175.00 per hour; or

3. Partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: \$175.00 to \$200.00 per hour.

(d) If an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement.

(e) A fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated;

3. The nature and length of the professional relationship with the employee; and

4. The experience, reputation and ability of the attorney performing the services.

(f) Counsel fees incurred in matters at the departmental level that do not reach the Merit System Board on appeal or are incurred in furtherance of appellate court review shall not be awarded by the Board.

(g) Reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded.

(h) The attorney shall submit an affidavit and any other documentation to the appointing authority.

(i) If settlement on an amount cannot be reached, either party may request, in writing, Board review.

4A:2-3.1 General provisions

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.

(b) A grievance is an employee complaint regarding any term or condition which is beyond the employee's control and is remedial by management.

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(e) In State service, this subchapter shall only apply to:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(f) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the Commissioner or Board.

(g) These rules shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

4A:2-3.2 Minor discipline appeal to appointing authority: State service

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Discipline Action form, unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and 4A:2-3.7 for appeal to the Board.

4A:2-3.3 Grievance appeal to appointing authority: State service

(a) Where departmental grievance procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) An employee not covered by a negotiated agreement or covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures in this subchapter.

(c) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(d) A department may consolidate two or more grievances on the same issue and process them as a group grievance. All grievants shall be promptly notified of this action.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) The burden of proof shall be on the employee.

4A:2-3.4 Grievance procedure: Step One: State service

(a) A grievance shall be presented in writing on the Department of Personnel grievance form to the office or individual designated by the department to process the matter. It must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;
2. State the requested remedy; and

3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance. Such hearing or grievance meeting shall be conducted within 30 days of receipt of the grievance, unless an additional time period is agreed to by the parties.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

4A:2-3.5 Grievance procedure: Step Two

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or
2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 days of receipt of the grievance.

(d) A written decision shall be rendered within 21 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a denial of the grievance appeal.

4A:2-3.6 Conduct and scheduling of hearings and grievance meetings: State service

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two, unless the grievance is satisfactorily resolved at Step One. In addition, a department, at its option, may also schedule a grievance meeting at either Step One or Step Two of the grievance process.

(b) A department may advance a grievance to Step Two of the grievance process. Timely notice of this action shall be supplied to the grievant.

(c) The following shall apply during a hearing at the department level:

1. An employee may be represented by legal counsel, an authorized union representative or appear on his or her own behalf. An employee may also be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

2. Permission for a reasonable number of relevant witnesses shall be granted upon the request of the employee or his or her representative or agent;

3. The employee or his or her representative or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

4. The spokesperson for either party shall have the right to present evidence and examine witnesses.

(d) Any grievance meeting shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's representative. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

(e) Departmental management shall schedule minor discipline and grievance hearings or grievance meetings during the employee's regular work hours as far as possible.

(f) The employee or employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

4A:2-3.7 Appeals from appointing authority decisions: State service

(a) Minor discipline may be appealed to the Board under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Commissioner shall review the appeal upon a written record or such other proceeding as the Commissioner directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or

evidence are not fully presented, the appeal may be dismissed and the commissioner's decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the Board will render a final administrative decision upon a written record or such other proceeding as the Board directs.

(b) Grievances may be appealed to the Commissioner within 20 days of the conclusion of Step Two procedures under these rules or the conclusion of departmental procedures under a negotiated agreement.

1. The Commissioner shall review the appeal on a written record or such other proceeding as the Commissioner directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Department of Personnel grievances form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the Department of Personnel must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In Commissioner or Board reviews, the employee shall present issues of general applicability in the interpretation of law, rule or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the Board within 20 days of receipt of the notice.

(c) The notice shall be served not more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

4A:2-4.2 Time for appeal

(a) An appeal shall be made in writing to the Board no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service or return to a former permanent title.

(b) If the appointing authority fails to provide the notice as specified in > N.J.A.C. 4A:2-4.1, an appeal must be filed within a reasonable time.

4A:2-4.3 Board hearing

(a) An appeal to the Board shall be processed in accordance with > N.J.A.C. 4A:2-2.9 et seq.

(b) The employee has the burden of proof to establish that the action was in bad faith.

(c) If bad faith is found by the Board, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. See N.J.A.C. 4A:2-1.5.

4A:2-5.1 General provisions

(a) An appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

(b) An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Board within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The Commissioner shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the Board shall provide appropriate protections and remedies to the employee.

4A:2-6.1 Resignation in good standing

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days' written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Board under > N.J.A.C. 4A:2-1.1.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in > N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under > N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Board under > N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under > N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under > N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

CHAPTER 3. CLASSIFICATION, SERVICES AND COMPENSATION

4A:3-1.1 Career service

(a) All job titles shall be allocated to the career service, except for those job titles allocated by the Board to the unclassified service as provided in > N.J.A.C. 4A:3-1.3 and those positions in State service allocated by the Board to the Senior Executive Service as provided in N.J.A.C. 4A:3-2.

(b) Before a title in the career service is reallocated to the unclassified service, the Board shall hold a public hearing to solicit comment with respect to the criteria set forth in > N.J.A.C. 4A:3-1.3.

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title. When a permanent incumbent is appointed to a different, unclassified title, the employee shall retain only those rights to a Merit System Board hearing available to career service employees upon separation from government service for disciplinary reasons (see N.J.A.C. 4A:2-2) or due to layoff (see N.J.A.C. 4A:8).

4A:3-1.2 Divisions within the career service

(a) The Commissioner shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures. See N.J.A.C. 4A:4-2.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commissioner that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;

2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or

3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities and negotiations representatives.

2. After the comment period and the public hearing, if any, the Commissioner shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to noncompetitive divisions, the Commissioner's decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.

2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.

3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under > N.J.S.A. 11A:3-4;

2. In local service, the title is so designated under > N.J.S.A. 11A:3-5;
3. The title is designated unclassified by another specific statute;
4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

(c) In local service, a principal executive officer, for purposes of unclassified appointments under > N.J.S.A. 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.

(d) In State service, a principal executive officer, for purposes of unclassified appointments under > N.J.S.A. 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant.

(b) Requests for such unclassified appointments shall be made to the Commissioner, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1. The board or commission must have the actual power to administer a statutorily designated function; and
2. The board or commission must have the full power of an appointing authority with regard to its personnel.

(c) Upon recommendation by the Commissioner, such appointments may thereafter be approved by the Merit System Board and recorded in the Board minutes.

4A:3-2.1 General provisions: State service

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with > N.J.S.A. 11A:3-3 and this subchapter.

(b) No more than 1,200 positions shall be allocated to the SES in all departments.

(c) No less than 85 percent of all positions allocated to the SES shall be filled by individuals with career status. Career status means permanent status in a career service title in State government, including those on an approved leave of absence from a permanent career position.

4A:3-2.2 Designation of SES positions: State service

(a) To be allocated to the SES, a position must have substantial managerial, policy influencing or policy executing responsibilities. Allocations to SES shall be determined on the basis of specific positions, not by job titles or category.

1. A substantial managerial or policy executing position is one which has significant control of substantial resources, responsibility for major programmatic outcomes and/or responsibility for a major organizational unit.

2. A policy influencing position is one which has influence on the department's/agency's direction, mission, priorities, major goals or objectives.

(b) An SES position shall only report to a higher level unclassified position or to another SES position.

(c) The Commissioner shall establish procedures for the submission of executive/senior management plans for each department.

1. Each department head shall submit an executive/senior management plan to the Commissioner which shall include the department's SES position requests.

2. A position allocated to the SES shall be part of the executive/senior management cadre of a department.

3. The Commissioner may request information about the position necessary to process the SES position request.

4. If the original major functions and responsibilities of a vacant position allocated to the SES change but are not included in the executive/senior management plan of the department, the new functions of the position shall be reviewed by the Commissioner before posting for or filling the position.

(d) At the discretion of a department head, an appointing authority may move an SES member from one position allocated to the SES to another position allocated to the SES. The appointing authority shall review the compensation of the SES member at that time and may recommend a salary adjustment, if appropriate. An appointing authority so moving an SES member shall notify the Department of Personnel of this change.

(e) An appointing authority may move an SES member to cover an emergency assignment or other emergent need for six months or less, at the discretion of the department head. The appointing authority need not notify the Department of Personnel of such movement.

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of vacancies in SES positions shall be posted, at a minimum, within the department in which the vacancies exist. Posting is not required if the department selects the incumbent for a position at the time of the initial allocation to the SES.

i. A department head wishing to circulate a Statewide posting of the vacancy shall do so through the Department of Personnel.

2. The department shall contact the Department of Personnel for assistance in recruiting to fill SES vacancies before recruiting applicants outside State service. Where possible, SES members from other departments will be encouraged to apply for a vacant SES position when it will not be filled from within the requesting department.

3. If the position is an initial conversion of a position previously assigned to the career service, the appointing authority shall notify in writing the incumbent of the availability of the SES position and provide the individual with the opportunity to complete the entire SES selection process.

4. The departmental selection process is at the option of the department. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

5. The department head shall forward his or her selection(s) to the Commissioner.

6. Final appointment shall be subject to approval by the Commissioner.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the placement of the non-appointed incumbent:

- i. Reassign the employee to a vacant position;
- ii. Separate a provisional employee without underlying career status and reassign the non-appointed incumbent to the position; or
- iii. Return an employee, serving provisionally in the highest permanent title held by the non-appointed incumbent, and reassign the non-appointed incumbent to the permanent title vacated by the provisional employee.

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

- i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series for which the employee is qualified in the same or another organizational unit.
- ii. The career status and compensation rights of the non-appointed incumbent shall be determined in accordance with the rules governing voluntary demotion. See N.J.A.C. 4A:4-7.8.
- iii. If the organizational unit offers the non-appointed incumbent options under either (b)3 or 4 above, the employee may accept either option.
- iv. If the organizational unit offers only the option under (b)3 above, the non-appointed incumbent shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the placement of a non-appointed incumbent under (b)3 or 4 above. See N.J.A.C. 4A:8.

6. If the placement of the non-appointed incumbent causes a reduction in salary of the employee, the department head may, at his or her discretion, recommend to the

Commissioner placement of the employee at a salary no greater than the salary the employee received in the permanent title held immediately prior to non-appointment.

(c) A non-appointed incumbent without career status may be:

1. Reassigned to an unclassified title;
2. Reassigned to a vacant career service title for which no eligible list exists; or
3. Terminated.

4A:3-2.4 SES performance evaluation: State service

The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the Commissioner.

4A:3-2.5 SES compensation: State service

(a) Positions allocated to the SES shall be designated as no-range, which means that no class code is designated for the position. However, salary payments for SES positions are subject to restrictions established by the Commissioner and the Director, Division of Budget and Accounting, under their legal authority.

(b) An incumbent with career status whose position is allocated to the SES, and who is appointed as an SES member, shall receive an initial salary that is no less than the salary at the time of his or her appointment as an SES member.

(c) After initial appointment, salary advancement shall be based upon performance. There shall not be specific steps within each salary level, nor increments based upon length of service.

4A:3-2.6 SES benefits: State service

(a) Effective January 1, 1997, SES members with underlying career service status shall be entitled to the same amount of vacation, sick and administrative leave received by career service employees. See N.J.A.C. 4A:6-1.2, 1.3 and 1.9. SES members without underlying career status shall be subject to the unclassified leave plan, if any, utilized in his or her department.

(b) SES members shall be entitled to participate in all leave-related programs open to career service employees and employees in the executive/senior management

cadre of a department, including State family leave, Federal family and medical leave, donated leave and the voluntary furlough program. See N.J.A.C. 4A:6.

(c) An SES member may apply for a career service promotional examination in his or her current unit scope as long as the permanent title he or she held immediately prior to SES appointment would have made the SES member eligible for the examination.

4A:3-2.7 (Reserved)

4A:3-2.8 (Reserved)

4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Commissioner at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the return of the employee to his or her career status:

- i. Reassign the employee to a vacant position/title;
- ii. Separate a provisional employee without underlying career status and reassign the returning employee to the position/title;
- iii. Return an employee serving provisionally in the permanent title previously held by the returning employee to his or her permanent title and reassign the returning employee to the position/title vacated by the provisional employee;

iv. If the returning employee's last held permanent position/title no longer exists, or his or her last held permanent title is no longer appropriate as a result of the position's allocation to SES, the employee shall have lateral and demotional rights determined as if the title currently exists.

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series for which the employee is qualified in the same or another organizational unit.

ii. The status and compensation rights of the returning employee shall be determined in accordance with applicable rules.

iii. When the organizational unit offers the employee options under either (c)3 or 4 above, the employee may accept either option.

iv. If the organizational unit offers only the option under (c)3 above, the employee shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the return of a permanent employee under (c)3 or 4 above. See N.J.A.C. 4A:8.

6. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

7. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)7 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary.

iii. The department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed or vacated or abolished due to a reduction in force, and the SES member has career status, the SES member shall have lateral, demotional and special reemployment rights based upon the permanent title held immediately prior to SES appointment.

(e) Individuals without underlying career status who are separated from the SES may be:

1. Appointed to an unclassified title;
2. Appointed to a vacant career service title for which no eligible list exists; or
3. Terminated.

4A:3-3.1 Classification of positions

(a) Each position in the career and unclassified services shall be assigned by the Department of Personnel to a job title.

(b) Positions in the career service shall, on the basis of job analysis, be assigned the title which:

1. Describes the duties and responsibilities to be performed and the level of supervision exercised and received;
2. Establishes the minimum education and experience qualifications necessary for successful performance; and
3. In State service, sets the level of compensation.

(c) Assigned job titles shall be used in all records and communications relating to personnel and payroll, including budgets. Appointing authorities may designate appropriate descriptive titles to be used for other purposes, such as correspondence with the public.

(d) Titles shall be identified by language which does not specify or imply a fixed gender.

(e) See N.J.A.C. 4A:3-3.9 for classification appeal procedures.

4A:3-3.2 Establishment of classification plans

(a) The Commissioner shall establish and maintain classification plans for all job titles in the career, senior executive and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles; and

2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title.

(c) A single specification may be used for a title series. In such cases, the distinction between different titles in the series will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification plans.

4A:3-3.3 Administration of classification plans

(a) The Commissioner shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;
2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility;
3. Modify specifications for existing titles or series to ensure their accuracy; and
4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Department of Personnel of new positions to be established, the authority and reasons for their establishment and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Department of Personnel with updated organization charts on an annual basis.

(d) Positions in the career, unclassified and senior executive services shall be subject to job audit by the Department of Personnel to ensure accurate classification and compliance with Title 11A, New Jersey Statutes and Title 4A, N.J.A.C.

(e) In State service, each department and autonomous agency shall designate an individual as the agency representative, to serve as its liaison with the Department of Personnel on all classification and compensation matters.

(f) In State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of the following to the

Department of Personnel. The Department of Personnel shall verify that proper notice has been given of each of the following:

1. Reorganizations;
2. Job content reevaluation requests;
3. Requests for new titles or title series;
4. Job specification modification requests;
5. Employee relations group changes; and
6. Establishment, modification or termination of flexitime programs, alternate workweek programs and adjusted hours of operation.

4A:3-3.4 Title appropriate to duties performed

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Commissioner shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) An appointing authority may request a classification review by the Department of Personnel in a manner and form as determined by the Commissioner. Such review may be initiated by the Department of Personnel. An employee or union representative may request a classification review in accordance with > N.J.A.C. 4A:3-3.9.

(c) No reclassification of any position shall become effective until notice is given affected permanent employees and approval is given by the Commissioner.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all applicable rules.

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with reclassification, an appeal may be filed in accordance with > N.J.A.C. 4A:3-3.9.

4A:3-3.6 New titles

(a) The Department of Personnel may determine that a new title or title series is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title or title series.

(b) Requests for new titles or title series must be submitted in writing by the appointing authority to the Department of Personnel on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;

2. Designation of any title to be abolished or replaced; and

3. Any other information requested by the Department of Personnel.

(c) If the Department of Personnel determines that there is a need for a new title or title series, a new job specification will be prepared and in State service the title will be evaluated for compensation purposes.

(d) Pending approval by the Commissioner of a new title or title series, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e) In State service, appeals from a salary evaluation of a new title will be processed in accordance with > N.J.A.C. 4A:3-4.3.

(f) The effective date of the creation of a new title by the Commissioner will be:

1. In State service:

i. The beginning of the pay period immediately after 14 days from the date the Department of Personnel receives the new title request and all requested information;

ii. The date of appointment to the Tentative Title; or

iii. An appropriate date as established by the Commissioner when a classification review has been initiated by the Department of Personnel; or

2. In local service, an appropriate date as established by the Commissioner.

4A:3-3.7 Trainee titles

(a) Trainee titles may be established in State and local service to provide for entry level employment.

1. This section applies to all titles designated by the term "trainee" and to other titles where the specification designates the application of the trainee rule, for example, Correction Officer Recruit.

2. A single trainee title may provide entry level employment for more than one title or title series, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete their working test periods.

(d) Advancement to the lowest title in the related title series, referred to in this section as the primary title, shall take place only upon successful completion of the training period. The length of the training period shall be designated in the specification for the particular trainee title. The designated length shall not be longer than 12 months, unless otherwise provided by law. The training period must be continuous, except if interrupted by leave or layoff from the trainee title, and may include provisional service in the trainee or higher related title.

(e) The training period shall be extended, upon approval by the Department of Personnel, beyond the time designated in the specification when:

1. The trainee has not yet completed the working test period; or
2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(f) The training period may be reduced, upon approval by the Department of Personnel, to a shorter period than designated in the specification when:

1. The trainee has completed the working test period;
2. The trainee meets the minimum qualifications for the primary title; and
3. All trainees in that title in the same appointing authority who meet these conditions are provided with a reduced training period.

(g) The advancement of the successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by reclassifying the trainee position to an appropriate primary title and by concurrent regular appointment of the trainee to the position.

1. To effect advancement, the appointing authority must certify the trainee's successful completion of the training period, and, for those primary titles requiring extra training courses or the attainment of a proficiency standard over the trainee title requirements, that the trainee has successfully completed such requirements. A trainee may only receive advancement to one of the appropriate primary titles specified for that trainee title.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The inability of a permanent trainee to attain a level of performance warranting advancement to the appropriate primary title shall be considered cause for separation.

4. Trainees advanced to a primary title shall be required to complete a working test period in the primary title. Trainees who fail to successfully complete their working test period in the primary title have no right to return to the trainee position.

4A:3-3.8 Intermittent titles

(a) In State service and in local service upon approval of the Commissioner of Personnel, the designation "intermittent" shall be used for those titles in the career service where work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular, year-round, full-time or part-time assignments. State employees who hold full-time primary employment in State service are not eligible to serve in an intermittent title.

(b) In State service, employees may be subject to furlough when due to managerial needs, the employee cannot be scheduled for work within the next week.

1. A furlough shall not be considered a layoff, nor shall the notice obligations or layoff rights set forth in N.J.A.C. 4A:8 be applicable to intermittent employees subject to furlough. However, reasonable advance written notice shall be given to furloughed employees.

2. Furloughing shall be done in the inverse order of seniority in the designated work unit based on official records at the end of the last pay period. Prior to use by the appointing authority, designated work units must be submitted to and approved by the Department of Personnel.

3. Recall from furlough shall be made in seniority order from among furloughed employees assigned to the designated work unit. Employees who hold full-time primary employment in State service are exempt from the recall provision.

4. In case of equal seniority, the tie shall be broken based on the number of hours in pay status under temporary employment during the last two years immediately preceding conversion to an intermittent title.

5. Recall may be extended on a regional or Statewide basis if the recall list for the designated work unit is exhausted.

6. Additional furlough procedures may be set by the Commissioner.

(c) Records for intermittent employees, including hours worked, recall lists, telephone contact lists and benefit time accumulation, shall be maintained by the appointing authority in a manner acceptable to, and subject to audit by, the Department of Personnel. If the Department's audit of a title demonstrates that the intermittent designation is inappropriate, the Department shall convert the title to a regular, year-round, full-time or part-time career service title. An incumbent in the converted title shall receive a provisional appointment to the title, subject to competitive testing and certification procedures. See N.J.A.C. 4A:4.

(d) See N.J.A.C. 4A:4-5.2 for working test periods for intermittent employees in State service.

(e) In local service, an appointing authority may request that the Commissioner establish intermittent titles.

1. The local appointing authority shall submit to the Commissioner a proposal, which shall specify:

- i. A list of proposed intermittent titles;
- ii. The prorated amounts of paid leave time;
- iii. The prorated length of the working test period for employees serving in such titles; and
- iv. A compensation plan which shall identify the per diem or hourly rates for all intermittent titles.

2. The local appointing authority shall not make intermittent appointments unless the intermittent titles have been approved by the Commissioner. Such appointments shall be made in accordance with procedures on appointments made to career service positions within the noncompetitive division. See N.J.A.C. 4A:3-1.2.

3. The local appointing authority shall retain all records concerning intermittent employment, subject to Department of Personnel audit, and submit to the Department on an annual basis a report identifying all intermittent appointments made during the year, the intermittent employees' length of employment and the titles utilized for these intermittent appointments.

(f) The following chart indicates the amount of vacation, sick and administrative leave to which intermittent employees in State service are entitled based on accumulated hours of work. See N.J.A.C. 4A:6-2.4(b) for holiday pay in State service.

**LEAVE ENTITLEMENTS--INTERMITTENT EMPLOYEES
(STATE SERVICE)**

VACATION LEAVE

	Employees with up to 10,440 hours of service (equivalent of 5 years)	After 10,440 hours of service (equivalent of 5 years)	After 25,056 hours of service (equivalent of 12 years)	After 41,760 hours of service (equivalent of 20 years)
Workweek 40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.	1 day (8 hours) for each 104 hours in regular pay status.	1 day (8 hours) for each 84 hours in regular pay status.

Workweek	Employees with up to 9,135 hours of service (equivalent of 5 years)	After 9,135 hours of service (equivalent of 12 years)	After 21,924 hours of service (equivalent of 20 years)	After 36,540 hours of service (equivalent of 20 years)
NL, NE, 35 and 3E	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.	1 day (7 hours) for each 93 hours in regular pay status.	1 day (7 hours) for each 73 hours in regular pay status.

SICK LEAVE

Workweek	Through Dec. 31 of First Calendar Year of Employment	After Dec. 31 of First Calendar Year of Employment
40, 4E and N4	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.
NL, NE, 35 and 3E	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.

ADMINISTRATIVE LEAVE

Workweek
 40, 4E and N4 1/2 day (4 hours) for each 174 hours in regular pay status to a maximum of 3 days (24 hours) in any calendar year.

NL, NE, 35 and 3E 1/2 day (3 1/2 hours) for each 152 hours in regular pay status to a maximum of 3 days (21 hours) in any calendar year.

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal from an employee or union representative shall be submitted, in writing, to the agency representative. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different existing title for the position, an explanation of how that title more accurately describes the duties of the position than the current or proposed title. The appeal should also include a completed position classification questionnaire. If the appellant's supervisor has not signed the questionnaire within five working days of receipt, the appellant may forward the questionnaire to the agency representative without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. The agency representative shall review the appeal, provide an organization chart and ensure that the information set forth in (c) above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or shall forward the appeal to the Department of Personnel and so notify the appellant, and may indicate a recommended approval or rejection of the appeal for specified reasons. If additional information is required, the agency representative shall forward the appeal to the Department of Personnel within 10 days of receipt of the appellant's response to the request for additional information.

2. A representative of the Department of Personnel shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision. The decision letter shall be issued within 60 days of receipt of the appeal and all requested information and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Commissioner and a determination that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or
- iii. The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

(d) In local service an appeal from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate regional office of

the Department of Personnel. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by the Department of Personnel, the appeal should also include a completed position classification questionnaire and an organization chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt, the appellant may forward the questionnaire to the Department of Personnel without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Department of Personnel shall review the appeal, request additional information if needed, order a desk audit where warranted, and determine that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties; or
- iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

2. The representative's decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(e) Appeals to the Commissioner may be made by an employee, authorized employee representative or local appointing authority and shall be submitted in writing, within 20 days of receipt of the decision letter and must include copies of all materials submitted and the determination received from the lower level, state which portions of the determination are being disputed and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Commissioner may render a decision based on the written record or appoint an independent classification reviewer. If the Commissioner appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commissioner within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification,

findings, conclusions, and recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

(f) If an appeal is upheld, the effective date of implementation shall be:

1. In State service, the pay period immediately after 14 days from the date the Department of Personnel received the appeal or reclassification request, or at such earlier date as directed by the Commissioner; or

2. In local service, an appropriate date established by the Commissioner.

(g) The decision by the Commissioner is the final administrative determination.

(h) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commissioner.

4A:3-4.1 General provisions

(a) In local service, appointing authorities shall establish compensation plans which provide for paying employees in reasonable relationship to their job titles.

1. Each appointing authority shall provide a current copy of its compensation plan to the Department of Personnel, and shall provide any subsequent modifications within 20 days after adoption.

2. When a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range.

3. An appointing authority may request information and technical assistance from the Department of Personnel in developing compensation plans.

(b) In State and local service, the Department of Personnel may audit an appointing authority's payroll records to determine compliance with Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., and orders issued by the Commissioner or the Board.

(c) In local service, payroll records may be audited through on-site examinations, submission of payrolls for specified time periods, or a combination of both. Upon request by the Department of Personnel, an appointing authority shall submit a payroll, certified by an authorized financial officer, which contains the following information and such other information as may be requested:

1. Name of jurisdiction;

2. Name of department;
3. Names, titles and social security numbers of employees;
4. Actual amount of pay for pay period, including dates employed;
5. Annual rate of pay; and
6. Beginning and ending dates for current pay period.

(d) In State service, the Commissioner shall establish, maintain and approve changes in a compensation plan for all employees in the career and unclassified services. See N.J.A.C. 4A:3-2.5 for Senior Executive Service compensation.

1. The compensation plan shall establish pay rates and a series of salary ranges.

2. Each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title and pay shall be adjusted in accordance with this subchapter, except as otherwise provided by law, rule or action of the Commissioner.

4A:3-4.2 Job evaluation: State service

(a) Each new job title shall be evaluated, and existing job titles reevaluated, based upon the New Jersey Job Content Evaluation System as approved by the Commissioner. Class codes shall be designated for job titles through this evaluation process. However, the Commissioner may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.

(b) Once the class code for a job title is designated, the salary range shall be determined according to workweek and work year as follows (See N.J.A.C. 4A:6-2.2 and 2.3 for designation of workweek):

1. The salary range for NL and NE titles shall be the same as the class code;
2. The salary range for 35 hour and 3E titles shall be one range lower than the class code;
3. The salary range for 40 hour, 4E and N4 titles shall be one range higher than the class code;
4. The salary range for 10 month titles shall be three ranges lower than the class code.

EXAMPLE: A job title has been designated class code 18 through the evaluation process. The salary range will be determined based on work week and work year as follows:

Work Week	Salary Range
NL, NE	18
35, 3E	17
40, 4E, N4	19
Work Year	
10 Month (NL or NE)	15

(c) For use of class codes in determining types of pay adjustments, See N.J.A.C. 4A:3-4.7.

4A:3-4.3 Job reevaluation requests and appeals: State service

(a) Appointing authorities may request a reevaluation by the Department of Personnel of a job title to determine its proper class code. The request, which shall be submitted through the agency representative, must include a brief rationale for the request, an organization chart, and the requested new salary level. The Department of Personnel may require additional information to be submitted in a manner and form as determined by the Commissioner.

(b) An appeal by an employee or authorized employee representative for a reevaluation shall be submitted, in writing, to the agency representative. The appeal must identify and explain the areas of substantive change in job content or other change in job evaluation factors through written narrative and a revised job specification, which shall be marked to indicate changes, and include evidence that the change in job content affects all employees in the title. The Department of Personnel may require additional information to be submitted in a manner and form as determined by the Commissioner.

1. The agency representative shall review the appeal and ensure that the information set forth in (b) above has been included. Within 10 days of receipt of the appeal, the appointing authority representative shall either notify the appellant that specific additional information is required, or shall forward the appeal to the Department of Personnel and so notify the appellant, and may indicate a recommended approval or rejection of the appeal for specified reasons. If additional information is required, the agency representative shall forward the appeal to the Department of Personnel within 10 days of receipt of the appellant's response to the request for additional information.

(c) A representative of the Department of Personnel shall review the request or appeal and render a written decision. A written decision on evaluation appeals shall be rendered within 60 days of receipt of all required information. The decision letter shall

include a notice of appeal rights to the Commissioner in the case of an appeal by an employee or authorized employee representative.

(d) Any affected employee or authorized employee representative may appeal the determination to the Commissioner within 20 days of its receipt. The appeal shall contain all information which was presented to the prior level, a statement identifying the specific portions of the prior level determination being contested, and the basis for appeal. The appellant shall provide copies to all parties.

(e) The Commissioner may render a decision based on the written record or appoint an independent salary reviewer. All parties, either personally, through counsel or authorized union representative, shall have the opportunity to present argument. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. If a salary reviewer is appointed, he or she shall submit a report and recommendation to the Commissioner within 30 days after the review.

2. The report and recommendation shall be sent to all parties. Exceptions may be filed within 15 days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) A decision by the Commissioner is the final administrative determination.

(g) If a title is approved for reevaluation, the effective date of the reevaluation shall be the first full pay period following the receipt by the Department of Personnel of a fully documented request for reevaluation under (a) above or a fully documented appeal under (b) above.

4A:3-4.4 Salary rates for initial appointments: State service

(a) An appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title. A new employee, for purposes of this section, is one who has had no immediate prior State service with that appointing authority. See N.J.A.C. 4A:4-7.4(b) for transfers.

(b) When the employee has separated from another State appointing authority, a State college, Rutgers, the State University, the New Jersey Institute of Technology, or the University of Medicine and Dentistry of New Jersey, and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency.

(c) An authorized hiring rate (AHR) is the set salary for initial appointments to particular job titles as established by the Commissioner. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR, and current employees in such titles whose salaries are the same as the AHR may be advanced by the Commissioner.

4A:3-4.5 Anniversary dates: State service

(a) An anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase.

1. An employee's anniversary date shall be assigned upon initial appointment to the first pay period following the completion of 26 full pay periods after appointment. In years which contain 27 pay periods, anniversary dates shall be determined in accordance with a schedule issued by the Department of Personnel.

EXAMPLE: An employee is appointed to a position on Monday, August 16, 1993. The first full pay period following the date of appointment is pay period 18, which begins on August 21, 1993. The employee's anniversary date is pay period 18 in calendar year 1994, expressed as 18/94.

2. An employee who starts work on the first Tuesday of a pay period immediately following a Monday holiday or special day off shall be assigned the anniversary date of that pay period.

3. An employee at the eighth step of the range only becomes eligible for advancement to the ninth step, if warranted by performance, following the completion of 39 pay periods.

(b) A current employee's anniversary date may change as a result of an advancement pay adjustment. See N.J.A.C. 4A:3-4.9. If the anniversary date is advanced based on the date of adjustment, the new anniversary date is the first pay period following the completion of 26 full pay periods after the date of that adjustment.

1. An employee's anniversary date may also change as a result of time spent in non-pay status. See N.J.A.C. 4A:3-4.6.

(c) Employees in intermittent titles shall receive initial and subsequent anniversary dates which correspond to the first pay period after completion of 1827 work hours (NL, NE, 35 and 3E titles) or 2088 work hours (40, 4E and N4 titles) in regular pay status. When an employee moves from an intermittent title, 80 hours of service in an intermittent title shall equal one pay period for 40, 4E and N4 titles and 70 hours of service in an intermittent title shall equal one pay period for NL, NE, 35 and 3E titles.

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) Except as provided in (b) below, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.

1. An employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status.

2. If an employee is in non-pay status on an intermittent basis during the course of a calendar year, the employee's anniversary date shall be advanced by one pay period for each 10 working days in non-pay status.

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1. Military leave;
2. Educational leave;
3. The two month period when employees in 10 month job titles are not scheduled to work;
4. Days on which part-time employees are not scheduled to work;
5. Leave without pay following exhaustion of sick leave injury;
6. Leave without pay while receiving workers' compensation benefits;
7. Leave without pay under a voluntary alternative to layoff program;
8. Voluntary furlough; and
9. Furlough extension leave.

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the Department of Personnel and the employee in writing that the anniversary date is to be changed. If an alternate workweek plan has been established, consideration of the adjusted hours per day must be made when counting the number of work days in non-pay status.

(d) Intermittent days without pay which total less than 10 shall not be carried forward to the next calendar year.

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) Except as provided in (b) below, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.

1. An employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status.

2. If an employee is in non-pay status on an intermittent basis during the course of a calendar year, the employee's anniversary date shall be advanced by one pay period for each 10 working days in non-pay status.

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1. Military leave;
2. Educational leave;
3. The two month period when employees in 10 month job titles are not scheduled to work;
4. Days on which part-time employees are not scheduled to work;
5. Leave without pay following exhaustion of sick leave injury;
6. Leave without pay while receiving workers' compensation benefits;
7. Leave without pay under a voluntary alternative to layoff program;
8. Voluntary furlough; and
9. Furlough extension leave.

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the Department of Personnel and the employee in writing that the anniversary date is to be changed. If an alternate workweek plan has been established, consideration of the adjusted hours per day must be made when counting the number of work days in non-pay status.

(d) Intermittent days without pay which total less than 10 shall not be carried forward to the next calendar year.

4A:3-4.7 Determining types of pay adjustments: State service

When an employee moves to a different title, including a change in workweek and/or work year, the type of pay adjustment shall be determined according to class code change as follows:

Compared to	Class Code of New Title	Type of Pay Adjustment	Applicable Section
Old Title			
Same	Lateral		N.J.A.C. 4A:3-4.8
Higher	Promotion, upward title reevaluation, and other advancements		N.J.A.C. 4A:3-4.9
Lower	Demotion		N.J.A.C. 4A:3-4.10
	Downward title reevaluation		N.J.A.C. 4A:3-4.11

4A:3-4.8 Lateral pay adjustments: State service

(a) A lateral pay adjustment occurs when an employee moves to a title having the same class code. An employee affected by such lateral pay adjustment shall not be considered to have been promoted or demoted, even if actual salary changes.

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary range of the former title. The employee's anniversary date shall not be changed.

EXAMPLE: An employee currently on step four, salary range A10 (\$15,800.94), in a 35-hour workweek title (class code 11), is appointed to a 40-hour workweek title in class code 11. The new salary range will be A12, and the employee will be placed on step four (\$17,415.44). NOTE: Salaries effective September 12, 1987.

(c) When a workweek change occurs for an employee whose salary is between steps of the range, the following calculation shall be made to accommodate the workweek adjustment. Divide the amount of extra salary by the amount of the increment of the employee's current salary range. This will provide a percentage of the current increment represented by the extra salary. Adjust the employee's salary to the new range at the same step. Calculate the amount of extra salary by applying the percentage arrived at above to the increment of the new range.

4A:3-4.9 Advancement pay adjustments: State service

(a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of

anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (f) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

2. Employees are serving in a title which is reevaluated to a higher class code; or

3. Employees are appointed to a title with a higher class code, when the conditions in (a)1 or 2 above are not applicable, provided the Department of Personnel finds the following criteria are met:

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and

- ii. The service in the lower title provided significant preparation and training for service in the higher title.

- (b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

- (c) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

- (d) Employees who do not meet the criteria set forth in (a) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in (b) and (c) above shall be applied as appropriate.

- (e) The anniversary date will be retained if the total salary increase after workweek adjustment is less than two increments in the employee's previous range. If the total salary increase after workweek adjustment is two increments or more, or the advancement results in step eight or nine, the anniversary date will be determined by the effective date of the action (frozen if step eight or nine).

- (f) The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step in the former range.

WORKWEEK OF EMPLOYEE'S NEW TITLE

	35 or 3E	NL or NE	40, 4E or N4
	35 or 3E	NO CHANGE	+1 +2
Workweek of Employee's Former Title		SALARY RANGE	SALARY RANGES
	NL or NE	-1	NO CHANGE +1
		SALARY RANGE	SALARY RANGE
	40, 4E or N4	-2 -1	NO CHANGE
		SALARY RANGES	SALARY RANGE

EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a 10 month title, is promoted to a 12 month title with salary range A15. There is no change in workweek. The work year adjustment would bring the employee to step four, range A13. Then, salary is calculated based on (a) above.

4A:3-4.10 Demotional pay adjustments: State service

(a) The salary of an employee who receives a disciplinary demotion shall be adjusted by reducing the employee's salary one increment in the higher range. Then, the employee's salary in the lower range will be set at the step that is equal to or next lower than such reduced salary.

1. The adjustment in (a) above shall be made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

i. When a workweek change occurs for an employee whose salary is between steps of the range, the following calculation shall be made to accommodate the workweek adjustment: Divide the amount of extra salary by the amount of the increment of the employee's current salary range. This will provide a percentage of the current increment represented by the extra salary. Adjust the employee's salary to the workweek adjusted

range at the same step. Calculate the amount of extra salary by applying the percentage arrived at above to the increment of the workweek adjusted range.

2. The anniversary date is retained, unless the action results in step eight or nine, in which case the anniversary date is based on the effective date of the action.

(b) When an appointing authority demotes an employee involuntarily in lieu of removal due to loss of qualifications for job title (for example, a Truck Driver whose license is suspended is demoted to a Building Maintenance Worker), salary and anniversary date shall be determined as provided in (a) above. If the employee is subsequently returned to the former title, he or she may be appointed up to and including the step held prior to the demotion.

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary.

1. The adjustment in (c) above is made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

2. The anniversary date is retained, unless the action results in step eight or nine.

i. If the action results in step eight, the employee shall be eligible for advancement to step nine, if warranted by performance, on the pay period that reflects the difference between the time served on the step prior to demotion and 39 pay periods.

ii. If the action results in step nine, the anniversary date is based on the effective date of the action.

3. This adjustment shall be applied only when the employee has served at least four months in the higher title and:

i. The employee has previously held the lower title;

ii. The employee is being demoted in lieu of layoff; or

iii. The Department of Personnel finds that service in the higher title provided significant preparation and training for service in the lower title.

4. If the conditions in (c)3 above are not met, then salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had remained in or been appointed to the lower title on the date he or she was appointed to the higher title. > N.J.A.C. 4A:3-4.4 may be applied, but in no case shall an employee receive a higher salary than that calculated through the application of (c) above.

(d) For all non-disciplinary demotions except voluntary demotions and those provided in (b) above, an employee demoted to a title lower than the class code of his or her permanent title must be given 45 days' notice of demotion by the appointing authority.

(e) In no event shall this section be used to gain a salary advantage for an employee.

4A:3-4.11 Downward title reevaluation pay adjustments: State service

(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the Commissioner.

2. All employees affected by a downward title reevaluation and their negotiations representatives shall be given notice by the appointing authority of the reduction in range at least 45 days prior to the effective date.

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the Commissioner, on his or her own initiative or upon the request of affected employees and/or their negotiations representatives, may provide for additional adjustments for affected employees.

4A:3-4.12 Movement of employees from no-range or single rate titles to titles having salary ranges: State service

(a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary shall be adjusted up to the step in the range that is the same or next higher than the salary of the no range or single rate title and the anniversary date assigned based on the pay period the employee would have been eligible for an increase in the no range or single rate title, providing the following two criteria are met:

1. The Department of Personnel finds that service in the no-range title provided the employee with significant experience and training for service in the range title; and

2. The employee has served in the former title for four months or more.

(b) When the employee's appointment does not satisfy the conditions in (a) above, salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had been serving in the range title on the date the employee was appointed to the no-range title, provided, however, that in no event shall the new salary be higher than the salary in the no-range title.

(c) If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the range.

(d) This section shall not apply to employees appointed from a Tentative Title or to a Trainee Title. See N.J.A.C. 4A:3-4.14 regarding Trainee Titles and 4A:3-4.15 regarding Tentative Titles.

4A:3-4.13 Salaries of employees whose annual salaries are not on a step in their salary range: State service

Except as otherwise provided by the Commissioner, an employee whose base salary is not on a step in his or her salary range shall remain at his or her current base salary. That part of an employee's salary that is above the nearest lower step in the salary range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the range.

4A:3-4.14 Movement of employees to trainee titles from titles having higher pay rates: State service

(a) Except as provided in (b) below, an employee with permanent status or with at least six months' continuous service may, at the option of the appointing authority, retain his or her current salary when appointed to a trainee title. The employee shall remain at his or her salary until the salary rate of the trainee title exceeds the employee's salary, the employee advances to the primary title after completing the training period, or the employee is advanced to a higher title. Upon advancement from the trainee title to the

primary title, the employee's salary shall be determined by reconstructing the employee's salary as if the employee had continued to serve in his or her permanent title during the training period or by the normal advancement from a trainee to a primary title, whichever is greater.

(b) An employee in (a) above shall not be paid higher than the maximum step of the primary title.

4A:3-4.15 Salaries for employees appointed to tentative title positions: State service

(a) When appointed to positions designated "Tentative Title":

1. New employees, at the discretion of their appointing authority, may be appointed at a salary up to the fourth step of the salary range initially recommended for the title by the Department of Personnel, based on the new title request materials submitted by an appointing authority.

2. Current employees of an agency shall have their salaries adjusted in accordance with rules which would be applicable if, in fact, the title were actually compensated at the salary range specified in (a)1 above.

(b) If the final evaluated range is lower than the initially recommended range, the salaries of employees serving in affected Tentative Title positions shall be adjusted in accordance with downward title reevaluations. See N.J.A.C. 4A:3-4.11.

(c) Anniversary dates shall be set based on the date of appointment to the Tentative Title.

4A:3-4.16 Salaries of employees on military leave during a trainee period: State service

(a) Upon return from military leave, a regularly appointed employee in a trainee title shall receive a salary at the six months rate, provided the total time in the trainee title on the job and on leave equals six months or more.

(b) Upon successful completion of the total 12 months of trainee service on the job, including the required working test period, the employee will be advanced to the primary title at the salary rate the employee would have received had the employee not been on military leave.

(c) The employee's personnel record shall indicate seniority in all pertinent titles retroactive to dates on which the employee would have gained such seniority had the employee not gone on military leave.

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) The salary of an employee appointed from a special reemployment list shall be determined as follows:

1. When appointed to the same title held at the time of the reduction in force, the employee shall receive the same step of the salary range received on the date of the layoff or the salary determined in accordance with (a)2 below, whichever is the most beneficial to the employee.

2. When appointed to a different title from the one held at the time of the reduction in force, the employee shall receive the most beneficial to the employee of the following:

i. The same step and salary range that he or she would have received if appointed to the new title on the date of the reduction in force; or

ii. When the employee is currently serving in another title, the salary determined by adjustment to the new title:

(1) When appointed to a new title with the same class code, make a lateral pay adjustment, > N.J.A.C. 4A:3-4.8;

(2) When appointed to a new title with a higher class code, make an advancement pay adjustment, > N.J.A.C. 4A:3-4.9. If the employee has attained a higher salary in a lower title than the current value of the step he or she would have received in the new title on the date of the layoff, the salary shall be set at the step that is next higher than the salary in the lower title. The anniversary date will be set based on the effective date of the action; or

(3) When appointed to a new title with a lower class code, make a demotional pay adjustment, > N.J.A.C. 4A:3-4.10.

(b) The anniversary date of an employee appointed from a special reemployment list shall be determined as follows:

1. When using (a)1 or (a)2i above to determine salary, reconstruct the employee's anniversary date to the date of the reduction in force, then calculate the additional number of pay periods needed to meet the requirements for a performance increment (except as provided in (a)2ii(2)). Assign the anniversary date which will include the additional number of pay periods of service needed to satisfy anniversary date requirements.

2. When using (a)2ii above to determine salary, follow the provisions for either a lateral pay adjustment (> N.J.A.C. 4A:3-4.8), advancement pay adjustment (> N.J.A.C. 4A:3-4.9) or demotional pay adjustment (> N.J.A.C. 4A:3-4.10) as applicable.

3. If at the time of the reduction in force the employee was at the maximum salary step for the title from which displaced, assign the anniversary date that reflects the length of time that the employee had been at the maximum step on the date of the reduction in force.

EXAMPLE: An employee is reappointed from a special reemployment list on April 3, 1993 (pay period 8/93) to the permanent title from which the employee was laid off on January 23, 1993 (pay period 3/93). At the time of the layoff the employee was receiving the ninth step of the salary range with an anniversary date of 1/93. When reappointed, the employee will receive an anniversary date of 6/93 to show that the employee had been at the maximum step of the salary range for two pay periods.

(c) The salary and anniversary date for an employee who is appointed to a title that was reevaluated after the date of the reduction in force shall be determined by calculating the salary and anniversary date by (a)1 and (b)1 above, using the title's former salary range. See N.J.A.C. 4A:3-4.9 and > 4A:3-4.11.

(d) This section shall not be used to obtain a salary greater than that the employee would have received in the absence of a reduction in force.

(e) This section shall be applied to unclassified or provisional employees recalled after a reduction in force in accordance with a collective negotiations agreement.

4A:3-4.18 Salaries and anniversary dates for employees appointed from a regular reemployment list: State service

(a) A current State employee who is appointed from a regular reemployment list shall have the salary and anniversary date determined in accordance with > N.J.A.C. 4A:3-4.8 through > 4A:3-4.11, as appropriate. If the employee would receive a greater salary under the provisions of (b) below, the appointing authority may request application of those provisions.

(b) An individual not currently employed by the State who is appointed from a regular reemployment list shall receive an anniversary date based on the new date of appointment and, at the request of the appointing authority, be paid:

1. When re-appointed to the prior permanent title, up to the same step in the salary range which the employee was receiving in that title; or, if the employee was serving in an unclassified title or provisionally in another title at the time of the separation, up to the same step in the salary range which the employee would have received had the employee been returned to his or her permanent title on the date of the separation.

2. When reappointed to a title other than the prior permanent title, up to the same step in the salary range which the employee would have received if the employee had been appointed to the title on the date of the separation.

(c) When an employee has been reappointed to a title which has been reevaluated since the separation, the employee's salary shall be set up to an amount determined by reconstruction. See N.J.A.C. 4A:3-4.10.

4A:3-4.19 Other forms of compensation: State service

The Commissioner shall issue annual updates to the Compensation Plan regarding computing pay for temporary employees, extra compensation on special projects, emergency rates and other allowances to employees.

4A:3-4.20 Retroactive pay: State service

Personnel actions having retroactive effective dates shall apply only to employees who remain on a State payroll on the date of the retroactive payment and employees who retire or die during the period of retroactive application.

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) An employee or appointing authority may request a waiver of repayment in accordance with the procedure for written record appeals. See N.J.A.C. 4A:2-1.

4A:3-5.1 General provisions

(a) In local service, overtime compensation shall be paid pursuant to standards prepared and administered by the appointing authority in accordance with the Fair Labor Standards Act, > 29 U.S.C. 201 et seq.

(b) In State service, overtime compensation for employees in the career, senior executive and unclassified services shall be paid pursuant to this subchapter. See chart (Appendix A) at the end of this subchapter which outlines these overtime provisions.

(c) See N.J.A.C. 4A:6-2 for State service hours of work and workweek designation rules.

4A:3-5.2 Definitions: State service

The following terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Base salary" means the employee's rate of pay exclusive of any additional payments or allowances.

"Cash overtime compensation" means payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

"Compensatory time off" means the granting of time off in lieu of cash payment where permitted for excess or unusual work time.

"Covered position" means a position which is subject to the provisions of the Fair Labor Standards Act, > 29 U.S.C. 201 et seq.

"Exempt position" means a position which is excluded from the provisions of the Fair Labor Standards Act.

"Fixed workweek title" means a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. See N.J.A.C. 4A:6-2.2.

"Holiday" means a legal holiday or a special holiday authorized by law or executive order.

"Non-limited title" means a title having irregular or variable work hours. Such titles may be designated as exempt non-limited (NL, N4), or covered, also known as non-exempt, non-limited (NE). See N.J.A.C. 4A:6-2.3.

"Overtime compensation" means cash overtime compensation or compensatory time off as permitted.

"Pay period" means the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following (Note: A schedule of pay periods is published annually by the New Jersey Department of the Treasury.).

"Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. For employees in covered titles, the regular rate includes clothing allowances unless the allowance is for the purchase or maintenance of prescribed clothing required by the employer. Employees in covered non-limited titles (NE) shall be deemed to have a 40-hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

"Seven day coverage position" means a position assigned to an area where work coverage is required on a seven day basis throughout the year.

"Workweek" means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

4A:3-5.3 40 hours or less in a workweek: State service

(a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

1. Employees in 35 hour fixed workweek titles (35, 3E) for time worked in excess of the regular workweek.

2. Employees in 35 hour fixed workweek titles (35, 3E) who are participating in an approved alternative workweek program may be eligible for overtime compensation for work performed beyond 70 work hours in a 14 day work period.

3. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

4. State Police law enforcement officers, at the request of the Office of Employee Relations.

5. Part-time employees only when they work beyond the regular workweek established for full-time employees in their titles.

(b) Temporary employees shall not be eligible for overtime compensation under this section.

(c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;

2. The employee works at least one hour beyond the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period, for employees in 35 hour fixed workweek titles (35, 3E); and

3. The work is covered by the job specification for the employee's title, except for emergencies as provided in > N.J.A.C. 4A:3-5.7(d).

(d) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the appointing authority with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek but not more than 40 hours, except that such employees participating in an approved alternative workweek program of 70 hours in a 14 day work period shall be so compensated for time worked in excess of 70 hours but not more than 80 hours.

- i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

- ii. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period for employees in 35 hour fixed workweek titles (35, 3E).

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. In no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

3. Work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular work day, or a work day in an approved alternative workweek program of 70 hours in a 14 day work period for employees in 35 hour fixed workweek titles (35, 3E).

4. Employees in non-limited (NL, NE) positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

4A:3-5.4 Criteria for exemption from Federal Fair Labor Standards Act: State service

(a) The following are the criteria for exemption from the Federal Fair Labor Standards Act, > 29 U.S.C. 201 et seq.:

1. An unclassified employee is exempt if he or she:

i. Holds a public elective office of the State;

ii. Is a member of the personal staff of an elected office holder;

iii. Is appointed by such an office holder to serve on a policy making level;

iv. Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office; or

v. Meets one of the criteria for exemption set forth in (a)2 through 6 below.

2. An executive employee paid at least \$250.00 a week on a salary basis exclusive of board, lodging and other facilities is exempt if the employee regularly directs the work of two or more other employees and the employee's primary duty is management of the enterprise or a recognized department or subdivision thereof.

3. An administrative employee who is paid on a salary or fee basis at least \$250.00 a week, exclusive of board, lodging or other facilities, is exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsible work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

4. A professional employee who is paid at least \$250.00 per week is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion of judgement; or his or her primary duty involves artistic work in a recognized field of artistic endeavor.

5. Executive, administrative and professional employees who are paid less than \$250.00 per week may be exempt under conditions specified in Federal regulations. See 29 C.F.R. 541.

6. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

(b) An individual position may be exempt if it meets the criteria in this section, even if it is in a covered title. See N.J.A.C. 4A:3-5.10(b) for position designation appeals.

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles: State service

(a) Employees in covered positions may be eligible for overtime compensation under this section as follows:

1. Employees in covered fixed workweek titles (35, 40) and covered non-limited titles (NE), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week, provided that compensatory time off in lieu of cash overtime compensation is permitted by one of the following agreements:

i. Applicable provisions of a collective negotiations agreement, memorandum of understanding, or any other agreement between the State and representatives of such employees;

ii. In the case of employees who do not have a collective negotiations representative, an agreement or understanding made between the appointing authority and the employee before the performance of the overtime work. For such employees who were hired prior to April 15, 1986, the regular practice in effect on April 15, 1986 regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

2. The Commissioner or his or her designee may approve an alternate work period and corresponding maximum hour designation for covered law enforcement and fire protection employees as set forth in the table below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours in the work period.

Maximum Hours in Work Period

Work Period (days)	Firefighters	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

3. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Commissioner or his or her designee, use a work period of 14 consecutive days for computing overtime compensation for covered employees.

4. Temporary employees shall be entitled to overtime compensation unless their work duties meet the criteria for exemption under the Fair Labor Standards Act.

(b) Overtime compensation under this section shall be paid as follows:

1. Covered employees (35, 40 or NE titles) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week as provided in (a)1 above. However, if an alternate work period is adopted pursuant to (a)2 above, overtime compensation shall be paid in accordance with that schedule.

2. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate.

3. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

4. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

5. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee receives such payment. However, upon termination of employment, an employee shall be paid for unused compensatory time at a rate not less than the average regular rate received during the last three years of employment, or the final regular rate received by such employee, whichever is higher.

6. Overtime compensation for work in excess of 40 hours for covered employees who work at different pay rates during the same workweek shall be paid as follows:

i. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

7. If a 14 day work period is elected for hospital employees under (a)3 above, covered employees shall receive overtime compensation for work in excess of eight hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate of pay. The extra compensation at the premium rate paid for hours worked in excess of eight in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

8. Work credited toward overtime compensation shall be in one-tenth hour units (six minutes) of continuous work beyond each regular work day.

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles: State service

(a) Employees in exempt positions may be eligible for overtime compensation under this section as follows:

1. Employees in exempt fixed workweek titles (3E, 4E) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the

approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week.

2. Employees in 4E titles who are participating in an approved alternative workweek program may be eligible for overtime compensation for work performed beyond 80 hours in a 14 day work period.

3. Employees in exempt non-limited titles (NL, N4) shall not be eligible for cash overtime compensation except as provided in > N.J.A.C. 4A:3-5.7(d).

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. See N.J.A.C. 4A:3-5.7(e)2 as to special project rates.

3. Employees in exempt positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

4A:3-5.7 Special circumstances: State service

(a) Eligibility for overtime compensation for on call employees shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. Employees in exempt positions (3E, 4E, NL, N4) shall have no entitlement to compensation for such time.

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(c) Eligibility for overtime compensation for travel shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commutation time shall have such hours included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall

only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. Overtime compensation for work not covered by the job specification. See N.J.A.C. 4A:3-5.3(c)3.

2. An agency head shall file with the Commissioner two reports concerning an exceptional emergency as follows:

i. Within seven days of the declaration of the exceptional emergency, a fully detailed justification for the declaration. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

ii. Within 30 days of the conclusion of the exceptional emergency, a list of the names, titles, hours of work designations and number of hours of emergency related overtime work of employees who performed emergency related work on an overtime basis.

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Commissioner shall establish emergency condition rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the Commissioner.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Commissioner.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the Commissioner or his or her representative for review and approval.

4A:3-5.8 Holiday pay: State service

(a) Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all work performed on a holiday, except as provided in (d) below, even if they are not in pay status for a full workweek.

(b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in > N.J.A.C. 4A:3-5.6. However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.

(c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee, the employee is entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency, the employee is required to work on the additional day, he or she shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, he or she shall not be eligible for overtime compensation or an alternate day off for that holiday.

(d) A part-time or full-time employee in a fixed workweek title, in conjunction with his or her appointing authority, may agree to work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

(e) Eligibility for overtime compensation for temporary employees shall be as follows:

1. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in > N.J.A.C. 4A:3-5.5(a)(4).

2. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to any form of compensation for a holiday not worked.

4A:3-5.9 Appointing authority responsibilities: State service

(a) Each appointing authority shall develop procedures for administering overtime that are consistent with this subchapter and at a minimum provide for:

1. Written authorization by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward accomplishing the work during regular work time; and

4. Written procedures for supervisory personnel to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures, written interpretations and any subsequent changes are to be filed with the Commissioner or his or her designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Commissioner or his or her representative.

(d) The following records shall be kept:

1. Name of employee in full;
2. Home address, including zip code;
3. Date of birth, if under 19;
4. Sex and occupation;
5. Time of day and day of week on which the employee's workweek begins;
6. Regular hourly rate of pay in any workweek in which overtime premium is due, or other basis of wage payment (such as "\$5.00 hr.," "\$40.00 day," "\$200.00 wk.");
7. Daily and weekly hours of work;
8. Total daily or weekly straight time earnings;
9. Total overtime compensation for the workweek;
10. Total additions to or deductions from wages paid;
11. Total wages paid each pay period;
12. Date of payment and the pay period covered by payment; and
13. Approved overtime requests and a summary of work accomplished.

(e) Upon demand, the appointing authority shall make available to the Commissioner or his or her representative all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Upon demand for reports of compensatory time off or comparable time off, the appointing authority shall make available to the Commissioner or his or her representative the following items:

1. The names, titles and salary ranges of employees receiving compensatory time off or comparable time off;

2. The names, titles and salary ranges of employees receiving payment for unused compensatory time off or comparable time off, the amount paid to each such employee, and the number of hours on which the payment was based;

3. The number of days on which compensatory time off or comparable time off was earned;

4. The total number of hours each employee worked beyond the normal workweek;

5. The total number of hours of compensatory time off or comparable time off earned by each employee;

6. The total number of hours of compensatory time off or comparable time off used by each employee;

7. The balance of unused compensatory time off or comparable time off for each employee; and

8. A justification for the granting of compensatory time off or comparable time off for each employee.

(g) Procedures for payments of compensable overtime will be published as part of the payroll manual.

4A:3-5.10 Appeal procedures: State service

(a) Appeals may be filed under this subchapter as follows:

1. Position designation appeals, in which the issue is the status of a particular position as exempt or covered under the Fair Labor Standards Act, > 29 U.S.C. 201 et seq.; and/or

2. Title designation appeals, in which the issue is the status of an entire job title in the State classification plan as exempt or covered under the Fair Labor Standards Act.

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, signed by the employee and the supervisor. If the appellant proposes a different status for the position (exempt or covered), he or she must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4.

2. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

- i. The position is properly classified as exempt or covered; or
- ii. The position is improperly designated, in which case the appointing authority shall provide appropriate duties or designate the appropriate status.

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All second level appeals shall be submitted to the Department of Personnel.

i. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, and the appointing authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

4. The appropriate section of the Department of Personnel shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Commissioner.

5. All appeals to the Commissioner must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the Department of Personnel.

i. The Commissioner shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the Commissioner shall be the final administrative decision.

(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the Department of Personnel.

2. The appeal shall be reviewed and a written decision issued in accordance with (b)4 above.

3. An appeal of the first level decision may be filed with the Commissioner in accordance with (a)5 above.

(d) Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. 4A:2-3.

N.J.A.C. 4A:3 App. A

NEW JERSEY ADMINISTRATIVE CODE
TITLE 4A. DEPARTMENT OF PERSONNEL
CHAPTER 3. CLASSIFICATION, SERVICES AND COMPENSATION
APPENDIX A: OVERTIME ELIGIBILITY AND COMPENSATION CHART

Current through March 15, 2004; 36 N.J. Reg. No. 6

ELIGIBILITY STATUS		COMPENSATION
Comp Plan	In excess of 35 but not more than 40 hours per workweek	In excess of 40 hours per workweek as prescribed by FLSA
35 (covered)	35 Cash compensation at one and one-half times the hourly proration of the base salary or compensatory time off (CTO) at one and one-half times the hours worked.	Cash compensation at one and one-half times the regular rate [FN1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 250 hours of CTO. [FN2]
35 (exempt)	3E Cash compensation at one and one-half times the hourly proration of the base salary or CTO	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.

			at one and one-half times the hours worked.
40 (covered)	40	Not applicable	Cash compensation at one and one-half times the regular rate [FN1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. [FN2]
40 (exempt)	4E	Not applicable	Cash compensation at one and one-half times the regular rate or CTO at one and one-half times the hours worked.
NL (covered)	NE	No cash compensation.	Cash compensation at one and one-half times the regular rate [FN1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. [FN4] [FN2]
NL (exempt)	NL	No cash compensation.	No cash compensation. [FN3] CTO for unusual work time to a maximum of hour for hour (discretionary). [FN5]
NL4 (exempt)	N4	Not applicable.	No cash compensation. [FN3] CTO for unusual work time to a maximum of hour for hour (discretionary). [FN5]

[FN1] Regular rate is the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

[FN2] Note: Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of CTO.

[FN3] Except as provided in N.J.A.C. 4A:3-5.7(d) (Exceptional Emergencies).

[FN4] Except as provided in N.J.A.C. 4A:3-5.3(d)2.

[FN5] Except as provided in N.J.A.C. 4A:3-5.6(b)2.

CHAPTER 4. SELECTION AND APPOINTMENT

4A:4-1.1 Career service appointments

(a) Regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of a working test period.

(b) The Commissioner may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans preference.

(c) The Commissioner may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division; or
2. In appropriate situations, to a related above-entry level title in the competitive division.

4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. 4A:3-2.

4A:4-1.3 Unclassified appointments

(a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Board.

(b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. See N.J.A.C. 4A:3.

4A:4-1.4 Conditional regular appointments

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;

2. The appointee meets the minimum qualifications for the title at the time of the appointment; and

3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Commissioner for good cause.

4A:4-1.6 Interim appointments

(a) For purposes of this rule, the term "phasedown" shall mean a phased reduction in size of a government operation, in anticipation of a closing of the operation.

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1. Is on a leave of absence;
2. Is on indefinite suspension;
3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Merit System Board on appeal; or
4. Has accepted an interim appointment.

(c) An interim appointment may be made where the position/title will be abolished at a future date pursuant to a closing or phasedown of a government operation. Such an interim appointment may be made only following official notification to the Commissioner of Personnel by the applicable department head, in State service, or by the appointing authority, in local service, of the closing or phasedown.

(d) An interim appointment may also be made to a vacant position/title in a government operation not scheduled for a closing or phasedown where:

1. An employee of a government operation scheduled for a closing or phasedown has accepted a reassignment to that government operation;
2. Due to operational requirements, the employee is needed by the governmental operation scheduled for the closing or phasedown while it continues to operate;
3. The government operation not scheduled for a closing or phasedown needs to fill the vacant position/title to which the employee would have been reassigned; and
4. The notification requirements in (c) above are met.

(e) When an appointing authority does not make an appointment in the situations listed in (b) above, the appointing authority shall reserve a position/title for the absent employee as a vacant position/title.

(f) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, on indefinite suspension or awaiting final administrative action of the Merit System Board on the appeal of a disciplinary demotion or removal, or during the period leading up to the date on which the closing or phasedown of the government operation is scheduled to conclude.

1. At the end of the interim appointment, the appointee shall return to his or her permanent title.

(g) An interim appointee shall possess the minimum qualifications for the title.

(h) If a complete eligible list exists for the title, the interim appointment shall be made from that list. An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

1. If the closing or phasedown of a government operation is rescinded after an interim appointment has been made from an eligible list, the interim appointee who was appointed from the eligible list shall receive a permanent appointment subject to the satisfactory completion of a working test period, regardless of whether the eligible list has already expired.

(i) An interim appointee shall continue to accrue seniority in his or her permanent title.

(j) The layoff rights of an interim appointee shall be determined from his or her permanent title. See N.J.A.C. 4A:8-2.

(k) The appointing authority shall advise interim appointees of their rights under an interim appointment. See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

4A:4-1.7 Temporary appointments

(a) The Commissioner may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Commissioner to a position established as a result of a short-term grant.

(b) A temporary appointee shall meet the minimum qualifications for the title.

(c) See N.J.A.C. 4A:4-4.7 for effect on permanent appointment rights.

(d) Consecutive temporary appointments in excess of the periods set forth in (a) above are prohibited.

4A:4-1.8 Emergency appointments

The Commissioner may authorize an emergency appointment for a period not to exceed 30 days when the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under > N.J.A.C. 4A:4-1.3, 1.4, 1.5, 1.6, 1.7 or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;

2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or

3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee.

1. The employee may accept appointment to other titles at the same or lower level, in the same or a different series for which the employee qualifies in the same or another organizational unit.

2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(d) on certification procedures.

4A:4-1.10 Approval of appointments by Department of Personnel

(a) All initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of the Department of Personnel.

1. The Commissioner may direct personnel action freezes in connection with layoffs or other emergent circumstances.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

(c) When a regular appointment has been made, the Commissioner may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties.

4A:4-1.11 (Reserved)

4A:4-2.1 Announcements and applications

(a) Notice of open competitive examinations shall be announced in a monthly job listing or by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates. Copies of notices for all open competitive examinations shall be available in each regional office of the Department of Personnel.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointing authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;

3. Minimum qualifications for admission to the examination;

4. Filing information; and

5. In open competitive examinations, a reference to duties and responsibilities.

(d) A promotional examination shall be reannounced if, within one year of the closing date, the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Commissioner, applications for open competitive and local service promotional examinations shall be filed with the Department of Personnel and applications for State service promotional examinations shall be filed with the appointing authority no later than the announced filing date, as established by the Department of Personnel. When mailed, the postmark date will be considered the date on which the application is filed.

(f) Prior to the filing date, an applicant may amend a previously submitted application.

(g) The Department of Personnel may request clarifying information from an applicant.

(h) All examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest.

(i) See N.J.A.C. 4A:4-2.17 for application processing fee procedures.

4A:4-2.2 Types of examinations

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;

2. Oral tests;

3. Performance tests;

4. Physical performance tests;

5. Evaluation of education, training or experience;

6. Assessment exercises; and

7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department of Personnel may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Department of Personnel for such service outside normal working hours.

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for persons with disabilities.

4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the unit scope (See N.J.A.C. 4A:1-1.3 for definition of unit scope);
3. If more than one vacancy, the total number of qualified permanent employees in appropriate lower titles in the unit scope exceed by fewer than three the total number of vacancies;
4. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
5. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (See N.J.A.C. 4A:4-2.11), except when:
 - i. A different residency requirement is specified by law or provided by the Commissioner; or

ii. It appears that there is an inadequate number of qualified residents available for the title.

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former State troopers, sheriff's officers, sheriff's deputies, County or Municipal Police Officers, New Jersey Transit police officers, Southeastern Pennsylvania Transit Authority (SEPTA) police officers, Amtrak police officers, or any persons who were previously employed by any State or Federal law enforcement agency or other public entity, and who performed duties comparable to the law enforcement duties performed in the positions specifically listed in > N.J.S.A. 40A:14-127.1, 45 years of age or under who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date. Former law enforcement officers as defined above who were involuntarily separated from service due to layoff, regardless of age, may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. For good cause, the Commissioner may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to > N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) In announcing open competitive examinations, including, but not limited to, entry-level law enforcement examinations, the Department of Personnel may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections and bilingual). The applicant's eligibility for particular announcements and/or title areas shall depend upon the applicant's residency as indicated on the application.

(d) When a promotional examination is announced, an open competitive examination may also be announced.

4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;

2. The next two lower in-series titles used in the local jurisdiction; or

3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one-year permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;

2. The next two lower in-series noncompetitive titles used in the local jurisdiction;

3. All related noncompetitive titles; or

4. Any competitive title.

(d) The title scopes described in (a)2, 3 and (c)2 through 4 above or any combination of such scopes may be used when a wider title scope is appropriate or the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Department of Personnel.

(e) In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(f) The local jurisdiction may be required to provide the Department of Personnel with copies of ordinances, tables of organization or other evidence of the jurisdiction's use of titles.

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;

2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or

3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.

2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.

3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.

4. To related titles, pursuant to an established plan approved by the Commissioner.

5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;

2. All applicants who are permanent in a bridge title or titles approved by the Commissioner and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Department of Personnel as related to a higher category title in terms of work performed and knowledge, skills and abilities required;

3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; or

4. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;

2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;

3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;

4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or

5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in > N.J.A.C. 4A:4-2.15.

2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed;

3. Have not received a Performance Assessment Review (PAR) final rating below the Commendable level (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and

4. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Merit System Board for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. The Department of Personnel may recommend to the Board good cause situations where out-of-title work should be accepted.

(d) Employees who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are separated or displaced as a result of layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;

2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or

3. Other valid reasons as determined by the Commissioner.

4A:4-2.7 Promotion upon waiver of competitive examination

(a) Following the announcement of a promotional examination, the Commissioner may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1. The employee has been successfully tested in the basic skills required for the promotional title;

2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;

3. The number of interested eligibles for the promotional examination referred to in (a) above does not exceed the number of promotional appointments by more than two; and

4. Veterans preference rights are not a factor.

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.

2. Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Department of Personnel.

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for police, fire and professional level engineering promotional examinations under (b) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;
2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
3. Documented serious illness or death in the candidate's immediate family;
4. Natural disaster;
5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and
6. Other valid reasons.

(b) For police, fire and professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination;
2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;
3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation; or
4. Error by the Department of Personnel or appointing authority.

(c) Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations

for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list based upon the score obtained, as if the examination had been taken when originally held.

(d) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(e) In situations involving illness, death or natural disasters, a candidate must request, in writing, a make-up examination, within five days after the examination date. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of military leave, prior vacation plans or other valid reasons of which a candidate is aware upon receipt of the examination notice.

(f) Make-up examinations will be administered to the extent possible under the same conditions as the original examination;

(g) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Department of Personnel or appointing authority, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(h) All candidates taking make-up examinations, except physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination.

(i) In extraordinary circumstances, such as an examination that requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. In such cases, candidates will be so notified at least 45 days prior to the date of the examination. The only exception will be documented error on the part of the Department of Personnel or appointing authority, in which case a make-up may be granted if practicable.

4A:4-2.10 Conduct and security of examinations

(a) The Department shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Securing, by unauthorized persons, of questions or materials, unless the same are available to all applicants;

2. Securing, by unauthorized persons, of information concerning the number or identity of applicants until all parts of the examination have been held and a resulting eligible list issued;

3. Identification of an applicant's examination papers or work before all examinations have been rated, where anonymity is required;

4. Impersonation of an applicant, either in person or by the improper exchange of applicant numbers or in any other manner;

5. Use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned;

6. A candidate's participation in an examination if it would likely result in physical injury to the candidate or others, or damage to property; or

7. Copying, recording or transcribing any examination question or answer, and/or the removal from any examination room of any question sheet, answer sheet, scrap paper, notes or other papers or materials related to the content of an examination.

(c) Anyone participating in a prohibited action under (b) above shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

(d) See N.J.A.C. 4A:4-2.6 on confidentiality of examination records.

4A:4-2.11 Residence standards

(a) In local service, an appointing authority shall provide the Department of Personnel with its residency ordinance or resolution, if any, on an annual basis as determined by the Department, and shall provide any subsequent modifications within 20 days after adoption.

(b) Where residence requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(c) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

(d) The Department of Personnel will review residence requirements for examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment.

(e) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Department for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, the Department may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(f) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

4A:4-2.12 Professional qualifications substitution program

(a) Applicants for designated open competitive or promotional examinations for professional titles may be permitted to substitute appropriate work experience, on a year-for-year basis, for specified higher educational requirements.

1. For titles requiring specific coursework or major fields of study, the successful completion of the coursework or fields of study shall be required.

2. Examination announcements shall contain, when appropriate, general information on the eligibility requirements and use of this program.

3. Appointing authorities shall conspicuously post information about this program.

(b) The Department shall make the determination whether prior work experience may be substituted for specified education requirements.

4A:4-2.13 College Level Examination Program (CLEP)

(a) College Level Examination Program (CLEP) scores are acceptable as a substitution for college credits required for open competitive or promotional examinations. Acceptable scores are those consistent with scores accepted for credit by Thomas A. Edison College as published annually in its catalog.

(b) The following standards shall be considered:

1. Applicants may be considered eligible to take open competitive and promotional examinations by substituting a combination of education, appropriate work experience and acceptable CLEP scores;

2. Acceptable scores on the CLEP General Examination and Subject Examinations will be considered the same as college undergraduate credits;

3. Acceptable scores on the five-part CLEP General Examination may be substituted for up to 30 undergraduate college credits;

4. Where specific course work and/or a major field of study are required in the job specification or examination announcement:

i. An acceptable score on an appropriate CLEP Subject Examination may be substituted for college credit hours;

ii. An acceptable subscore on an appropriate subsection of the CLEP General Examination may be substituted for undergraduate college credit hours for the course work requirement;

5. Acceptable scores achieved on any of the CLEP Subject Examinations shall be viewed to correspond to those credits normally earned during the final two years of a four-year college curriculum;

6. Acceptable scaled scores or subscores on the CLEP General Examination shall be viewed to correspond to those credits normally earned during the first two years of a four-year college curriculum.

(c) Information about testing site locations and application procedures may be obtained from the CLEP Educational Testing Service (ETS), Princeton, New Jersey and Thomas A. Edison College, Trenton, New Jersey.

(d) Examination announcements shall contain general information on eligibility requirements and utilization of CLEP.

(e) Appointing authorities shall conspicuously post information about CLEP.

4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities

(a) Otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional with a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from an appointing authority utilizing the title that the individual can satisfactorily perform the duties of that title under actual conditions of service;

- iii. A physician's statement with supporting medical documentation;
 - iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and
 - v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.
- (c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.
- (d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Department of Personnel.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. Credit shall be awarded as follows:

i. Three points for Exceptional; or

ii. One point for Commendable.

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Commendable and credit shall be given for that rating.

3. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations, continuous permanent service accumulated prior to an intergovernmental transfer pursuant to > N.J.A.C. 4A:4-7.1A (except in the case of an intergovernmental transfer of a police officer or a firefighter), voluntary furloughs and the following types of leaves shall not be deducted from seniority.

1. All leaves with pay including sick leave injury (SLI);

2. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

(e) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five year period immediately preceding the announced closing date.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(g) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 90 percent to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10 point maximum.

(h) A candidate may take the Law Enforcement Candidate Record (LECR) examination no more than once in a two-year period. The score earned by the candidate on the LECR examination shall be used for all entry-level law enforcement examinations for which the candidate files during that time period. See N.J.A.C. 4A:4-2.17(a)1 on fees for use of score after one year.

(i) Ties in final earned ratings shall not be broken.

4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles; and
6. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

4A:4-2.17 Application processing fees

(a) A \$5.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. The Commissioner shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring and administering the examination, including the processing of any appeals or reviews associated with the examination. Receipts derived from this application fee shall be appropriated to the Department for use in developing, procuring and administering law enforcement officer

and firefighter examinations, including the processing of any appeals or reviews associated with those examinations.

i. When announcements for the entry-level law enforcement examination list more than one title area (such as police, sheriff, corrections and bilingual), the processing fee shall be charged for each title area selected by the applicant. If a candidate is not appointed to a position within one year of establishment of the pool of eligibles, the candidate may remain in the pool of eligibles for an additional year by payment of the processing fee for each title area selected by the eligible.

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance--a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.

2. Work First New Jersey Act--a copy of the applicant's Families First card.

3. Supplemental Security Income--a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").

2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

4A:4-3.1 Types of eligible lists

(a) The Commissioner may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures.
2. Promotional, which shall include permanent employees who meet qualification requirements.
3. Regular reemployment, which shall include former permanent employees who resigned in good standing, retired, or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;
4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and
5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.
2. Within each sub-list as provided in (a)1 above, the order of names shall be:
 - i. Eligibles entitled to disabled veterans preference in order of their scores;
 - ii. Eligibles entitled to veterans preference in order of their scores; and
 - iii. Non-veteran eligibles in order of their scores.
3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).
4. See N.J.A.C. 4A:5-21 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. Within each class code or class level, eligibles shall be ranked in accordance with > N.J.A.C. 4A:8-2.3(c)1.

EXAMPLE: Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

EXAMPLE: Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Department of Personnel.

4A:4-3.3 Duration and cancellation of eligible lists

(a) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Commissioner determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Commissioner prior to its expiration date, except that no list shall have a duration of more than four years.

2. The name of any employee shall not remain on a regular reemployment list for more than three years from the date of resignation, except as provided in (a)1 above.

3. Special reemployment, police reemployment and fire reemployment lists shall have unlimited durations.

(b) The Commissioner may, in cases of fraud, illegality, test invalidity, error by the Department or other good cause, cancel an eligible list prior to its expiration date by issuing an order, which shall provide a means for the notification of eligibles. The Commissioner shall also provide a copy of this order to affected appointing authorities.

(c) See N.J.A.C. 4A:4-4.9 for appointments after the expiration date of the eligible list.

4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;

2. To implement an order of the Commissioner or Board in an appeal or proceeding instituted during the life of the list;

3. To correct an administrative error;

4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or

5. For other good cause.

4A:4-3.5 Consolidation of eligible lists

(a) The Commissioner may consolidate successive eligible lists for a given title which result from successive open competitive or promotional examinations by one or more of the following methods:

1. Placing the first name on the later list after the last name of the prior list;
 2. Supplementing an incomplete list with an eligible list for an appropriate title;
- or
3. Combining of names of eligibles by scores.

(b) When eligible lists are consolidated, the part of the eligible list which was promulgated first shall not continue beyond its expiration date.

4A:4-3.6 Additions to eligible lists

(a) The Commissioner may add names to an eligible list at any time during the life of the list under the following circumstances:

1. A make-up examination has been given and a candidate has received a passing score;
2. To correct an error by the Department of Personnel;
3. To implement an appeal decision; or
4. Where a third party, such as a college or the Veterans Administration, has submitted documents to correct an administrative error.

(b) When the name of an eligible is added to an existing list to correct an error made by the Department of Personnel, the Department shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the Commissioner shall determine the effect of the action on certifications and prior permanent appointments. See also > N.J.A.C. 4A:4-1.4 for conditional regular appointments.

4A:4-3.7 Priority of eligible lists

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department or autonomous agency from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

2. Promotional;

3. Special reemployment, when the available position/title is located in a department or autonomous agency other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

4. Regular reemployment, police or fire reemployment; and

5. Open competitive.

(b) Reinstatement of a permanent employee following disability retirement shall have priority over appointment from any eligible list, except a special reemployment list. See N.J.A.C. 4A:4-7.12.

(c) The existence of an open competitive or promotional list in a jurisdiction receiving an employee in an intergovernmental transfer in accordance with > N.J.A.C. 4A:4-7.1A shall not be a bar to such transfer.

(d) Reemployment of certain law enforcement officers and firefighters pursuant to the provisions of > N.J.A.C. 4A:4-3.9 and > 4A:4-3.10 shall have priority over appointment from any eligible list, except a special reemployment list.

(e) For purposes of this section, an autonomous agency in local service is one which, by statute, is a body corporate and has the powers of an appointing authority. In State service, an autonomous agency is one which, by law, is in but not under the supervision of a principal department.

4A:4-3.8 Correction of errors

(a) The Department may correct an error at any time during the life of an eligible list.

(b) The Commissioner shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4A:4-3.6.

4A:4-3.9 Reemployment program for certain law enforcement officers and firefighters

(a) A municipality or a county which has established a police department as described in > N.J.S.A. 40A:14-180 may appoint any person to an entry level title in the police department who has:

1. Served as a law enforcement officer, other than a special law enforcement officer or seasonal law enforcement officer, in good standing in any State, county or municipal law enforcement department or agency;

2. In the case of service with the State, or a county or municipality operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period in a law enforcement title;

3. In the case of service with a county or municipality not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period in law enforcement title; and

4. For reasons of economy, efficiency or other related reasons, was laid off, or demoted from a law enforcement title to a non law enforcement title, within 60 months prior to the appointment permitted in (a) above.

(b) A municipality which has established a fire department as described in > N.J.S.A. 40A:14-9.9, or a fire district established in accordance with > N.J.S.A. 40A:14-70, may appoint any person to an entry level firefighter title who has:

1. Served as an officer or member, other than a temporary or seasonal officer or member, in good standing, in any fire department or fire district, or as a civilian Federal firefighter in good standing at any Federal military installation in New Jersey;

2. In the case of service with a fire department in a municipality or a fire district operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period;

3. In the case of service with a fire department in a municipality or a fire district not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period;

4. In the case of service as a civilian Federal firefighter, satisfactorily completed such firefighter training as is required for employment as a civilian Federal firefighter;

5. Except in the case of civilian Federal firefighters, for reasons of economy, efficiency or other related reasons, was laid off, or demoted from a firefighter title to a non-firefighter title, within 36 months prior to the appointment permitted in (b) above; and

6. As a consequence of the closure of a Federal military installation in New Jersey, been terminated as a civilian Federal firefighter within 48 months prior to the appointment permitted in (b) above.

4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

(a) A municipality, county or fire district interested in making an appointment pursuant to > N.J.A.C. 4A:4-3.9 (hereafter "program") may contact the Department of Personnel for a list of persons compiled as follows:

1. Those persons laid off or demoted as provided in the program from a law enforcement title to a non-law enforcement title in the case of service with a police department;

2. Those persons laid off or demoted as provided in the program from a firefighter title to a non-firefighter title in the case of service with a fire department in a municipality or a fire district; or

3. Those persons terminated as a civilian Federal firefighter as provided in the program.

(b) A person who would like to be placed on a list of persons as indicated in (a) above may contact the Department of Personnel to apply for inclusion on a list.

1. Placement on a list of persons terminated as a civilian Federal firefighter as provided in the program shall be determined based on the person's length of service as a civilian Federal firefighter.

(c) In selecting a person from the list, the municipality, county or fire district shall verify and certify to the Department of Personnel the eligibility of the person for appointment pursuant to this program.

1. A municipality or fire district interested in making an appointment under this program shall give first preference in making an appointment to residents of the municipality and second preference to residents of the county not residing in the municipality.

2. A county interested in making an appointment under > N.J.A.C. 4A:4-3.9(a) shall give first preference in making an appointment to residents of the county.

(d) An appointment made under this program:

1. Shall be reported to the Department of Personnel;

2. Shall have priority over open competitive and promotional eligible lists and regular reemployment lists, but no such appointment shall be made if a special reemployment list exists for the title in the municipality, county or fire district interested in making the appointment;

3. Shall be made without regard to seniority, age, veteran's status or the municipality, county or fire district from which a person was laid off or demoted;

4. Shall not be subject to a working test period; and

5. Shall not be made to a title other than an entry level title without Department of Personnel approval.

(e) A person appointed under this program:

1. May not be appointed a second time under this program unless the person is again laid off or demoted for reasons of economy, efficiency or other related reasons;

2. Shall begin to accrue seniority as of the effective date of the new appointment;

3. Shall not retain any superior rank held in the municipality, county or fire district from which the person was laid off or demoted; and

4. Shall not be removed from the special reemployment list for the jurisdiction from which the person was laid off.

4A:4-4.1 Need for certification

(a) When a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by the Department of Personnel to enable the Department to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

(b) When a permanent competitive position has been filled on a nonpermanent basis, the Department of Personnel shall determine whether there is a need to issue a certification.

4A:4-4.2 Issuance of certification

(a) Upon determining that there is a need for a certification as provided in > N.J.A.C. 4A:4-4.1, the Department of Personnel shall issue or authorize the issuance of a

certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list.

1. When the Department of Personnel has accepted a single application for one or more title areas, pursuant to > N.J.A.C. 4A:4-2.3(c), the certification shall be drawn from the pool of eligibles based on their title area and county preference and their residency.

(b) When a certification is issued, the Department shall notify or authorize the notification of the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police and fire reemployment lists, the name of one interested eligible for each permanent appointment; or

2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment. Eligibles who receive the same score shall have the same rank. If three or more eligibles can be certified as a result of this ranking without resorting to all three highest scores on the list, then only those eligibles will be certified.

i. When fewer than three interested eligibles are certified, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

ii. When a certification is comprised of multiple lists and an eligible's name appears more than once, the eligible will only be counted once for purposes of making a complete certification.

(d) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

4A:4-4.3 Certification from appropriate lists

(a) When an eligible list for a title is either unavailable or incomplete, the Department may authorize a certification from an eligible list for an appropriate title of the same or higher level, in the same or related series under the following conditions:

1. The education and experience requirements for both titles are substantially similar;

2. The necessary knowledge, skills and abilities were evaluated in the examination process;

3. The geographic scope of eligibility to which the announcement was limited is the same as or includes the geographic location of the original title; and

4. The appropriate eligible list may be used to supplement any existing list in order to establish a complete certification.

(b) The Department of Personnel may also authorize a certification from a common or similar State or local service eligible list under the following circumstances:

1. The appointing authority has requested the use of such list in writing;

2. The examination requirements of the titles for which the eligible lists may be certified shall be appropriate for the title in the requesting jurisdiction;

3. The State or local lists will be used to supplement the existing list in order to create a complete certification; and

4. Only those persons on the eligible list who have expressed an interest in working in the jurisdiction shall be certified.

(c) In local service, regular reemployment lists may be used to certify against vacancies in the same or comparable titles in all appointing authorities in the respective jurisdiction, except school districts.

(d) See N.J.A.C. 4A:8-2.3 for uses of special reemployment lists in State and local service.

4A:4-4.4 Limitation on number of times eligible is certified

(a) A non-veteran eligible who has been certified to the same appointing authority from an open competitive list on three occasions and who has been passed over in favor of a lower ranked eligible on each occasion, shall have his or her name withheld from future certification to the same appointing authority. The appointing authority may request that such eligible be recertified, in which case only that eligible and any higher or equal ranking veteran eligible shall be certified.

(b) All eligibles on a promotional list shall be certified, in order of rank, as long as they remain on the list.

4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin

(a) A certification may be issued limited to persons of a particular sex, religion or national origin of the eligibles, where such factors are bona fide occupational qualifications (BFOQ) that are essential to successful job performance and the normal operation of the appointing authority.

(b) The appointing authority shall determine those positions in State service and those specific titles in local service for which BFOQ designations are essential.

(c) A request for a BFOQ designation shall be signed by the agency or department head, or designee, and the affirmative action officer, and submitted by the appointing authority to the Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) and shall include:

1. The purpose of the BFOQ being requested;
2. An accurate description of the employment for which the BFOQ is sought, including:
 - i. The position number in State service and the specific title in local service;
 - ii. The duties of the position and percentage of time required to perform those duties;
 - iii. The post location; and
 - iv. The shift designation.
3. A statement why a person without the specific BFOQ cannot perform the position's duties;
4. What accommodations were considered to permit persons without the BFOQ to perform the duties and why the accommodations were not adopted; and
5. Such other information as requested by the Division.

(d) The appointing authority shall have the burden of proof that a BFOQ designation is necessary.

(e) The Director, Division of EEO/AA shall review the request and advise the appointing authority in writing of his or her decision to either accept the BFOQ request or not accept the request based on insufficient justification.

(f) The Division of EEO/AA will audit BFOQ positions to eliminate artificial barriers that may exist to equal employment opportunity and particular BFOQ designations may be reconsidered or eliminated.

(g) Any person who has been denied an employment opportunity as a result of a BFOQ designation may contest the designation as a discrimination appeal in State service (> N.J.A.C. 4A:7-3.2 et seq.) or a general appeal in local service (> N.J.A.C. 4A:2-1.1).

4A:4-4.6 Eligibles on military leave

(a) Interested eligibles on military leave shall continue to be certified. The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed.

(b) On return from military duty, an appointed eligible shall, after successful completion of the working test period, have the same rights, privileges and obligations as if the eligible had served continuously in the title from the original effective date of appointment.

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in > N.J.A.C. 4A:4-6.1;
2. Permanent appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;
3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. The Department of Personnel must be notified when the eligible wishes to be considered for certification;
4. The eligible has a criminal record which adversely relates to the employment sought.
 - i. The following factors may be considered in determining whether a criminal record adversely relates to employment:
 - (1) The nature and seriousness of the crime;
 - (2) The circumstances under which the crime occurred;

(3) The date of the crime and age of the eligible when the crime was committed;

(4) Whether the crime was an isolated event; and

(5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer or firefighter titles and other titles as the Commissioner may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to the Department of Personnel, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the Commissioner.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to the Department, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the Department.

2. If the appointing authority fails to provide either the Department or the eligible with copies of materials, the request for removal may be denied.

(c) The Department of Personnel shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in > N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Department may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

(g) When the Department of Personnel has accepted a single application for one or more law enforcement title areas, pursuant to > N.J.A.C. 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

(h) When an eligible has been permanently appointed from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;

2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or

3. Appoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list, provided that:

- i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;

- ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and

iii. See N.J.A.C. 4A:4-2.15(i) for tie scores.

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department. The report of disposition of the certification shall include:

1. Name of the eligibles to be permanently appointed;
2. The effective date of the requested permanent appointments;
3. In local service, the appointee's salary;
4. A statement of the reasons why the appointee was selected instead of a higher ranked eligible or an eligible in the same rank due to a tied score;
5. In situations where an appropriate list is used, the title and functions of the appointee's employment; and
6. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Department may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8-1.1 et seq. for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

4A:4-4.9 Date of appointment

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.
2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or

3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall be no later than the disposition due date.

4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff; or
3. Appointments to titles previously held on a permanent basis within current permanent continuous service.
4. For lateral title changes, See N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

4A:4-5.2 Duration

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request should be submitted to the Department of Personnel at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four month period.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.

(c) When notice of termination is served following the last day of the working test period pursuant to > N.J.A.C. 4A:2-4.1(c), the working test period shall end on the date of service of the notice.

(d) Persons appointed to entry level law enforcement, correction officer, juvenile detention officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

1. In local service, law enforcement officers who are required by > N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course. However, major disciplinary procedures applicable to employees serving in a working test period (see N.J.A.C. 4A:2-2) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

i. Law enforcement officers who have successfully completed the police training course prior to appointment shall begin their working test period on the date of regular appointment.

2. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-11.

(e) An approved leave of absence including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.

1. A paid leave of absence for a correction officer or juvenile detention officer for the purpose of training required by > N.J.S.A. 52:17B-68.1 shall not extend the length of the working test period unless the course in which the appointee is enrolled is scheduled to end after the one year period.

4A:4-5.3 Progress reports

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to > N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports.

(d) In State service, the appointing authority shall:

1. Retain all reports for an employee in his or her individual personnel file;

2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to the Department of Personnel, within five days following the last day of the working test period, copies of all progress reports and the final report and the written notice of separation or return to his or her permanent title;

3. Retain all progress reports and related material for the length of an employee's service and for six years following his or her separation from State service, if applicable; and

4. Retain for auditing any other records so identified by the Department of Personnel.

(e) In local service, the appointing authority shall furnish working test period progress reports to the Department of Personnel upon request.

4A:4-5.4 Working test period appeals

(a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for procedures.

(b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for procedures.

4A:4-5.5 Restoration to eligible list or former title

(a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Commissioner determines that the employee is suitable for appointment to another position.

1. The Commissioner may consider:

- i. Whether the list can be certified to another appointing authority;
- ii. The recommendation of the employee's former appointing authority; and
- iii. Any other relevant factors.

2. Any employee who has been removed for disciplinary reasons shall not be restored to an eligible list.

3. Any employee who has filed an appeal pursuant to N.J.A.C. 4A:2-4 shall have his or her request for restoration held in abeyance pending the appeal.

(b) An employee who is laid off during the working test period shall be restored to the eligible list from which he or she was appointed.

(c) A permanent employee serving a working test period in another title shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;
2. Is ineligible, by law, for employment in the title;
3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;
4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or
9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

4A:4-6.2 Actions against disqualified persons

(a) A disqualification under > N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;

4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (See N.J.A.C. 4A:4-6.4);
 2. Disqualification for medical or psychological reasons (See N.J.A.C. 4A:4-6.5);
- and

3. Examination related matters other than (a)1 and (a)2 above (See N.J.A.C. 4A:4-6.6) including:

- i. Disqualifications under > N.J.A.C. 4A:4-6.1;
- ii. List extension or revival; and
- iii. Denial of veterans preference.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

4A:4-6.4 Review of examination items, scoring and administration

(a) Candidates for multiple choice examinations shall be permitted to review the scoring key for a period of five business days beginning on the second business day after the examination has been held.

1. Within the review period set forth in (a) above, candidates may file an appeal against the scoring key and/or examination items.

2. The appeal shall be in writing, specify the question(s) being challenged and must be received by the Department of Personnel by the end of the review period.

3. All questions under appeal shall be reviewed by the Department of Personnel and, when necessary, appropriate action taken to modify the examination scoring.

4. No appeal relating to the scoring key or a multiple choice examination shall be permitted after the review period.

(b) Candidates for tests other than multiple choice may review their examination papers and the scoring key and may file an appeal in writing of examination items and scoring 20 days after the Department of Personnel provides notification of examination results. Candidates for multiple choice examinations may review their examination papers and the scoring key during this 20 day period, but may file appeals during this period only with respect to the scoring of their test papers. See (a) above for multiple choice scoring key and/or examination item appeals.

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination.

(d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

(e) In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers. Candidates shall be notified of any such restrictions at the time that the examination is administered.

(f) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (f) below for report requirements.

3. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) In accordance with the Americans with Disabilities Act, > 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

iii. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

iv. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request; and

3. The results of such examinations are used only in accordance with the Americans with Disabilities Act.

(c) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;
2. He or she may file an appeal with the Merit System Board within 20 days of such notification;
3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and
4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(d) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish the appellant with all of the information supplied to the Merit System Board.

2. In those limited circumstances when the examining physician, psychologist or psychiatrist certifies that such disclosure would be injurious to the appellant's health, and provides a basis specific to the diagnosis of that appellant, the information shall not be provided to the appellant but shall be provided by the appointing authority to the appellant's attorney or doctor.

3. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(e) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (f) below for report requirements.

(f) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;
2. The length of the examination or interview;
3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;
4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and
5. All tests that have been administered (for example, EKG, EEG, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(g) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

- i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

- ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (> N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (> N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision or situation being appealed.

2. An appeal must be filed with the Department of Personnel as indicated on the notice advising of disqualification.

(b) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 et seq., > 4A:4-7.6 and > 4A:4-7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to > N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) A permanent transfer shall require the consent of both organizational units, the affected employee, and the approval of the Department of Personnel.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. The consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods or for any other documented purpose which is in the best interest of the public service. All temporary transfers must be approved by the Commissioner of the Department of Personnel.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Commissioner may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

i. The organizational unit to which the transfer is being made;

ii. The effective date of the transfer; and

iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Commissioner of the Department of Personnel finds that a more immediate transfer is required to provide a needed service.

4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within 90 days of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction and the affected employee, and the approval of the Department of Personnel.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and > 40A:14-122.8.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Department of Personnel approve the title, based on the following criteria:

- i. The title(s) shall have substantially similar duties and responsibilities;
- ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;
- iii. There shall be no special skills, licenses, certification or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; > N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; > N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; > N.J.A.C. 4A:6-1.2, Vacation leave, 4A:6-1.3, Sick leave, and 4A:6-1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; > N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; > N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; > N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and > N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

4A:4-7.2 Reassignments

A reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. See N.J.A.C. 4A:4-7.7 for appeals.

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Commissioner may allow relocations assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to a relocation of an office or unit, or a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be requested, paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

4A:4-7.4 Retention of rights

(a) An employee who is temporarily transferred shall retain promotional rights in the promotional unit scope from which he or she has transferred.

(b) An employee who is transferred in accordance with > N.J.A.C. 4A:4-7.1, intergovernmentally transferred (other than an employee in a police officer or firefighter title) in accordance with > N.J.A.C. 4A:4-7.1A or is reassigned shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights

and sick and vacation leave entitlements. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlements shall be retained.

(c) An employee who is permanently transferred due to a combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

(d) An employee who is reassigned from one promotional unit scope to another shall retain no promotional rights in the former unit.

4A:4-7.5 Transfer during a working test period

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations, or the exercise of lateral displacement rights in the course of layoff procedures.

(b) An employee who is permanently transferred during the working test period due to a combining of functions or operations or the exercise of lateral displacement rights shall be permitted to complete working test period in the new organizational unit.

4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under > N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements.

2. In State service, the employee's rate of compensation on direct movement as adjusted or workweek, work year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work, education and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.

4A:4-7.7 Appeals

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the Commissioner's approval, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;

2. The demotion was agreed to by both the employee and the appointing authority; and

3. The demotion was for a set period of time up to a maximum of one year.

4A:4-7.9 Resignation/new appointment

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of determining sick and vacation leave, and in State service, administrative leave, entitlements shall be retained.

2. See N.J.A.C. 4A:3-4.4(b) for salary placement in State service.

(b) The employee may request placement on the regular reemployment list for the previous title.

(c) The new appointing authority shall inform the employee of his or her effective resignation of permanent status prior to the employee's new appointment.

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the Department of Personnel shall place the employee's name on a reemployment list. A regular reemployment list shall be subject to certification to all appointing authorities in a jurisdiction.

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to > N.J.A.C. 4A:4-3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

(d) Seniority commences as of the date of regular reemployment.

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision operating under Title 11A, New Jersey Statutes, the Department of Personnel

upon request of both appointing authorities shall approve the transfer of some or all affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

(d) If positions are abolished because they are made no longer necessary by the consolidation of functions, affected employees shall be accorded all layoff and special reemployment rights in N.J.A.C. 4A:8.

4A:4-7.12 Reinstatement following disability retirement

(a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

(c) Seniority for an employee who is reinstated following a period of disability retirement shall be the aggregate of permanent service in the employee's permanent title prior to retirement and following reinstatement. Seniority shall not be granted for the period of retirement.

NEW JERSEY ADMINISTRATIVE CODE
TITLE 4A. DEPARTMENT OF PERSONNEL
CHAPTER 5. VETERANS AND DISABLED VETERANS PREFERENCE
SUBCHAPTER 1. ELIGIBILITY

Current through March 15, 2004; 36 N.J. Reg. No. 6

4A:5-1.1 Veterans preference

(a) The Adjutant General of the Department of Military and Veterans' Affairs is empowered by statute to make veterans preference eligibility determinations. See P.L. 2000, c.127. The provisions of this section are for informational purposes only.

(b) A person is entitled to veterans preference (abbreviated as "V") if he or she had been discharged or released from active United States military or naval service under conditions other than dishonorable, and:

1. Served at least 90 days in the active United States military or naval service and had been discharged under conditions other than dishonorable, during:

- i. World War I, between April 6, 1917 and November 11, 1918;
- ii. World War II, on or after September 16, 1940 and on or before December 31, 1946;
- iii. Korean Conflict, on or after June 23, 1950 and on or before January 31, 1955;
or
- iv. Vietnam Conflict, on or after December 31, 1960 and on or before May 7, 1975;
- v. The 90 day period must have begun on or before one of the ending dates above, and shall not include any period of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of a civilian course, nor any time spent as a cadet or midshipman at one of the service academies. During the period of the Vietnam conflict, the following are excluded: any service performed pursuant to the provisions of > section 511(d) of Title 10, United States Code; or any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve or Coast Guard Reserve.

2. Served in the Lebanon crisis on or after July 1, 1958, in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest;

3. Served in the Lebanon peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation, for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after September 26, 1982 and on or before December 1, 1987;

4. Served in the Grenada peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after October 23, 1983 and on or before November 21, 1983;

5. Served in the Panama peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 20, 1989 and on or before January 31, 1990;

6. Served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for the Operation Desert Shield/Desert Storm mission for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after August 2, 1990;

7. Served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for the Operation Restore Hope mission for a period, continuously or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 5, 1992, or on or after the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, and on or before March 31, 1994, or the date of termination as proclaimed by the President of the United States or the Congress, whichever date is latest;

8. Served in Operation Uphold Democracy in Haiti for a period of at least 14 days, continuously or in the aggregate, on or after September 19, 1994 and commencing on or before March 31, 1995, in Haiti or on board any ship actively engaged in patrolling the territorial waters of Haiti for that period, and received an Armed Forces Expeditionary Medal for such service;

9. Served in the Republic of Bosnia and Herzegovina for a period of 14 days, continuously or in the aggregate, on or after November 20, 1995, in direct support of Operation Joint Endeavor or Operation Joint Guard, commencing on or before June 20, 1998, and:

- i. Was deployed in that nation or in another area in the region;
- ii. Was on board a United States naval vessel operating in the Adriatic Sea; or
- iii. Operated in airspace above the Republic of Bosnia and Herzegovina;

10. Served in Operation Enduring Freedom in a theater of operation and in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after September 11, 2001 but commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

11. Served in Operation Iraqi Freedom in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of the operation, commencing on or

before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

12. Received a service-incurred injury or disability during a period in (b)1 above or while serving in a mission during a period and within the corresponding geographical area, as specified in (b)2 through 11 above, regardless of the length of service or, in the case of (b)8 above, regardless of receipt of an Armed Forces Expeditionary Medal;

13. Served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, provided he or she voluntarily enlisted in such service, was a United States citizen at the time of enlistment, did not renounce or lose United States citizenship, and was honorably discharged; or

14. Is the surviving spouse of a person entitled to veterans preference and has not remarried.

4A:5-1.2 Disabled veterans preference

(a) A person is entitled to disabled veterans preference (abbreviated as "DV") if he or she:

1. Receives or is entitled to receive, under United States Veterans Administration guidelines, compensation for service connected disability of 10 percent or more arising out of military or naval service as provided in > N.J.A.C. 4A:5-1.1(b);

2. Is the spouse of a person entitled to disabled veterans preference who:

i. Is not employed by any jurisdiction operating under Title 11A, New Jersey Statutes; and

ii. Waives any right to preference for the duration of the spouse's employment;

3. Is the surviving spouse of a person entitled to disabled veterans preference and has not remarried; or

4. Is a parent or surviving spouse of a person who would have been entitled to veterans preference under > N.J.A.C. 4A:5-1.1 but who died while in service. The use of the preference by one such survivor shall suspend the right of any other so long as the first individual who uses the preference is employed by any jurisdiction operating under Title 11A, New Jersey Statutes.

CHAPTER 5. VETERANS AND DISABLED VETERANS PREFERENCE
SUBCHAPTER 1. ELIGIBILITY

Current through March 15, 2004; 36 N.J. Reg. No. 6

4A:5-1.3 Filing for veterans or disabled veterans preference

(a) Veterans or disabled veterans preference shall apply prospectively from the date of the initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or the date of the Adjutant General's determination from an appeal, as the case may be. See N.J.A.C. 5A:9-1.4.

(b) Veterans or disabled veterans preference is effective for all examinations in which the closing date for applications falls on or after the Adjutant General's determination, as provided in (a) above.

(c) For initial employment in the noncompetitive division and for promotion from the noncompetitive division to the competitive division, veterans or disabled veterans preference is effective on the date of the Adjutant General's determination, as provided in (a) above.

NEW JERSEY ADMINISTRATIVE CODE
TITLE 4A. DEPARTMENT OF PERSONNEL
CHAPTER 5. VETERANS AND DISABLED VETERANS PREFERENCE
SUBCHAPTER 2. USE OF PREFERENCE

Current through March 15, 2004; 36 N.J. Reg. No. 6

4A:5-2.1 Open competitive examinations

(a) A list of eligibles who have passed an open competitive examination shall appear in the following order:

1. Eligibles entitled to disabled veterans preference in the order of their scores;
2. Eligibles entitled to veterans preference in the order of their scores;
3. Non-veteran eligibles (abbreviated as "NV") in the order of their scores.

(b) Whenever more than one eligible has the same score and same veterans status, the tie shall not be broken and they shall have the same rank.

(c) Whenever a disabled veteran or veteran is certified from an open competitive list and a regular appointment is to be made, the appointing authority shall first appoint disabled veterans and then veterans in the order of ranking. For example:

TEST SCORES		RANKED LIST OF ELIGIBLES		
Name and Status	Score	Name and Status	Score	Rank
John Green (NV)	0	Robert Brown (DV)	80	1
Charles Black (V)	85	Charles Black (V)	85	2
Mary White (V)	85	Mary White (V)	85	2
Robert Brown (DV)	80	John Green (NV)	90	3
Jane Silver (NV)	80	Jane Silver (NV)	80	4
Tom Gold (NV)	75	Tom Gold (NV)	75	5

Assuming all eligibles are interested in appointment, Robert Brown must receive the first appointment. The next vacancy must be filled by appointing either Charles Black or Mary White. Assuming Mary White is appointed, the next vacancy must be filled by appointing Charles Black. The next vacancy must be filled by choosing among John Green, Jane Silver and Tom Gold, in accordance with the "rule of three." See > N.J.S.A. 11A:4-8.

(d) Appointing authorities are not required to give preference to disabled veteran or veterans when making a provisional appointment from an incomplete list. See > N.J.A.C. 4A:4-1.5.

NEW JERSEY ADMINISTRATIVE CODE
TITLE 4A. DEPARTMENT OF PERSONNEL
CHAPTER 5. VETERANS AND DISABLED VETERANS PREFERENCE
SUBCHAPTER 2. USE OF PREFERENCE

Current through March 15, 2004; 36 N.J. Reg. No. 6

4A:5-2.2 Promotional examinations

(a) No distinction shall be made between disabled veterans and veterans in promotional examinations. Both are referred to as veterans in this rule.

(b) A list of eligibles who have passed a promotional examination shall appear in the order of their scores regardless of veteran or nonveteran status. However, when scores are tied, the names of veterans shall be listed first within each rank.

(c) When a single vacancy is to be filled from a promotional certification headed by a veteran, any veteran among the top three interested eligibles may be appointed in accordance with the "rule of three." See > N.J.S.A. 11A:4-8. A nonveteran shall not be

appointed unless the appointing authority shows cause why the veterans should be removed from the promotional list. See > N.J.A.C. 4A:4-4.7 for removal procedures.

(d) When a single vacancy is to be filled from a promotional certification headed by a nonveteran, any reachable eligible may be appointed in accordance with the "rule of three." See > N.J.S.A. 11A:4-8.

(e) If there is more than one vacancy, and a veteran is ranked first on the certification as a result of the first appointment from the certification, then a veteran must be appointed to the next vacancy. If, as a result of the second appointment, another veteran heads the certification, then a veteran must be appointed to the third vacancy. This process shall be followed for each appointment that is made from the same certification.

(f) As an example, assume that the following represents the ranked order and status of interested eligibles which appear on promotional certifications for single vacancies:

1. Veteran 2. Non-Veteran 3. Non-Veteran

Veteran must be offered the appointment.

1. Veteran 2. Non-Veteran 3. Veteran

Either (1) or (3) must be offered the appointment.

1. Non-Veteran 2. Veteran 3. Non-Veteran

Either (1), (2) or (3) may be offered the appointment.

1. Veteran (Tied) 1. Non-Veteran 2. Non-Veteran

Veteran must be offered the appointment.

(g) As another example, assume that the following represents the ranked order and status of eligibles on the same promotional certification from which multiple vacancies must be filled:

1. Non-Veteran 2. Veteran 3. Veteran 4. Non-Veteran

Either (1), (2) or (3) may be offered the first appointment. If the non-veteran is appointed to the first vacancy, a veteran, initially ranked (2) on the promotional certification, would now be ranked (1). Another veteran, initially ranked (3) on the promotional certification, would be ranked (2). The certification now appears as follows:

1. Veteran 2. Veteran 3. Non-Veteran

Either (1) or (2) may be appointed to the second vacancy, but (3) may not be appointed.

NEW JERSEY ADMINISTRATIVE CODE
TITLE 4A. DEPARTMENT OF PERSONNEL
CHAPTER 5. VETERANS AND DISABLED VETERANS PREFERENCE
SUBCHAPTER 2. USE OF PREFERENCE

Current through March 15, 2004; 36 N.J. Reg. No. 6

4A:5-2.3 Veterans and disabled veterans preference in the noncompetitive division

In making appointments in the noncompetitive division, preference shall be given among qualified applicants to disabled veterans, then veterans.

**CHAPTER 6. LEAVES, HOURS OF WORK AND EMPLOYEE
DEVELOPMENT**

4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (> N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.12); convention leave (N.J.A.C. 4A:6-1.13); elective office leave (N.J.A.C. 4A:6-1.17); family leave under State law (N.J.A.C. 4A:6-1.21A); and Federal family and medical leave (N.J.A.C. 4A:6-1.21B).

2. An appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval of the Department of Personnel.

3. An appointing authority may grant unpaid union leave pursuant to N.J.A.C. 4A:6-1.16.

4. Vacation and sick leaves for police officers and firefighters are established by local ordinance. See N.J.S.A. 40A:14-7 and 40A:14-118.

(b) In State service, this subchapter shall apply to career service employees, unless otherwise indicated. Temporary employees (see N.J.S.A. 11A:4-13c.) are not entitled to the leaves or benefits in this subchapter.

(c) Records of all employee leaves of absence and types of leave shall be maintained by State and local appointing authorities and reported to the Department of Personnel for the official State record in the prescribed manner and form.

(d) A leave of absence shall not disqualify an applicant for a promotional examination.

(e) Where leave procedures are not set by this subchapter, appointing authorities shall establish such procedures subject to applicable negotiations requirements.

4A:6-1.2 Vacation leave

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See (c) below for definition of continuous service.

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:

i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;

ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;

iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;

iv. Over 20 years of continuous service, 25 working days.

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.

4. Vacation leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(b) From initial employment up to the end of the first calendar year, annual paid vacation leave for full-time local employees shall be at least the amounts specified in (a)1 and (a)2 above. Thereafter their vacation leave shall be at least:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;

2. After 10 years of service and up to 20 years of continuous service, 15 working days; and

3. After 20 years of continuous service, 20 working days.

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of N.J.A.C. 4A:4-7.1A are met, employment for different jurisdictions (except in the case of the intergovernmental transfer of a police officer and firefighter), without actual interruption due to resignation, retirement or removal.

1. An employee who has been appointed from a special reemployment list shall be credited with any continuous service prior to the layoff in addition to continuous service subsequent to reemployment.

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

3. An unclassified State employee, who is reappointed following a layoff under the provisions of a collective negotiations agreement, shall be credited with service prior to the layoff and shall continue to accrue service upon reappointment.

(d) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. See N.J.A.C. 4A:3-3.8(e) for paid vacation leave to which State employees in intermittent titles are entitled.

(e) In State service, vacation leave may be granted and shall be recorded and tracked in hours.

(f) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave, provided, however, that:

1. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave.

2. In State service, vacation leave not taken by an employee in the career, unclassified or senior executive service who is called to active duty in response to the continuing global war on terrorism, armed conflict with Iraq, or other areas of heightened tension throughout the world, including the defense of the Homeland Security of the United States, shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave; and

3. In local service, vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the Commissioner of Personnel, the leave is used or the employee is compensated for that leave.

(g) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused earned vacation leave, even if the employee has received an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A.

(h) An employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year. See N.J.A.C. 4A:6-1.5(b)2 for State service.

(i) Upon the death of an employee, unused vacation leave shall be paid to the employee's estate.

(j) See N.J.A.C. 4A:6-1.22 for the donated leave program

4A:6-1.3 Sick leave

(a) Full-time State employees shall be entitled to annual paid sick leave as set forth in (a)1 and 2 below. Full-time local employees shall be entitled to a minimum of annual paid sick leave as follows:

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days.

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. See N.J.A.C. 4A:3-3.8(e) for paid sick leave to which State employees in intermittent titles are entitled.

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension but shall continue to accrue during a voluntary furlough or furlough extension leave.

(d) Sick leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(e) An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

(f) Unused sick leave shall accumulate from year to year without limit, whether or not it was accrued prior to an intergovernmental transfer in accordance with > N.J.A.C. 4A:4-7.1A, except that the sick leave of a police officer or a firefighter who receives an intergovernmental transfer shall accrue from the effective date of the transfer.

(g) Sick leave may be used by employees who are unable to work because of:

1. Personal illness or injury (see N.J.A.C. 4A:6-21B for Federal family and medical leave);

2. Exposure to contagious disease (See N.J.A.C. 4A:6-1.21B for Federal family and medical leave);

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (See N.J.A.C. 4A:1-1.3 for definition of immediate family, See N.J.A.C. 4A:6-1.21A for family leave under State law and See N.J.A.C. 4A:6-1.21B for Federal family and medical leave); or

4. Death in the employee's immediate family, for a reasonable period of time.

(h) Sick leave may be used by an employee with a disability for absences related to the acquisition or use of an aid for the disability when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

(i) See N.J.A.C. 4A:6-1.22 for the donated leave program.

4A:6-1.4 Sick leave procedures: State service

(a) The provisions in this section are applicable to State service.

(b) An employee whose work schedule is other than a 24-hour or shift coverage shall, by the scheduled reporting time, notify a contact person designated by the agency of any absence due to illness.

(c) An employee whose work unit requires 24-hour or shift coverage shall, at least one hour before the scheduled starting time, notify the designated contact person of any absence due to illness. In case of sudden illness or emergency, exceptions may be granted by the designated contact person.

(d) An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period.

(e) When an illness is of a chronic or recurring nature causing occasional absences of one day or less, one proof of illness shall be required for every six month period. The proof of illness must specify the nature of the illness and that it is likely to cause periodic absences from employment.

(f) In case of sick leave due to exposure to a contagious disease, a death in the employee's immediate family or to care for a seriously ill member of the employee's immediate family, reasonable proof may be required.

(g) An appointing authority may require an employee to be examined by a physician designated and compensated by the appointing authority as a condition of the employee's continuation of sick leave or return to work.

1. Such an examination shall establish whether the employee is capable of performing his or her work duties and whether return to employment would jeopardize the health of the employee or that of other employees.

2. The appointing authority shall set the date of the examination to assure that it does not cause undue delay in the employee's return to work.

(h) Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action.

(i) An appointing authority shall provide the Department of Personnel with a record of an employee's unused sick leave when the employee separates from State service. The Department of Personnel shall provide an appointing authority with a record of an employee's unused sick leave if an employee is reemployed. Upon reemployment, an employee is entitled to utilize any unused sick leave from the previous period of employment. Such unused leave carried over shall be used before any leave accrued after reemployment. However, such unused leave carried over shall not be counted for purposes of Supplemental Compensation on Retirement. See N.J.A.C. 4A:6-3.2.

(j) In accordance with the Americans with Disabilities Act, > 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority representatives in connection with inquiries into the ability of an employee to perform job-related functions;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.5 Vacation, administrative and sick leave adjustments: State service

(a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than

23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.

2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

(c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d) An employee shall not be reimbursed for accumulated sick leave when leaving State service except for separations on retirement as provided in N.J.A.C. 4A:6-3.

(e) When an employee is transferred in State service, the employee's former appointing authority shall provide the new State appointing authority with a record of an employee's unused vacation, administrative and sick leave.

(f) In State service, when an employee's workweek changes, the employee's vacation, administrative and sick leave entitlements shall be recalculated in the following manner:

1. The number of hours of vacation, administrative and sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1 of the current year, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the current year (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Her new sick leave entitlement is computed by dividing 350 by seven, the number of hours in a 35 hour workweek workday, to yield the result of 50 days of sick leave. The 50 days are then multiplied by eight, the number of hours in a 40 hour workweek workday. Thus, Mary Smith's converted sick leave hours are 400.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for the current year (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 ($43.75 \times 7 = 306.25$, rounded to 306).

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

- (a) The provisions concerning sick leave injury (SLI) benefits in this subchapter apply to full and part-time State employees in the career, senior executive and unclassified services. SLI benefits for employees in intermittent titles will be based on the expected length of service.

- (b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1. An employee who can return to work on a part-time basis shall be compensated for the hours actually worked and receive SLI benefits for the hours missed due to the disability.

2. SLI benefits shall be reduced by the amount of any temporary disability payments under > N.J.S.A. 34:15-12 (Workers' Compensation) or > N.J.S.A. 43:21-25 et seq. (Temporary Disability Benefits Law).

3. Benefits are limited to a period beginning on the initial date of the injury or illness and ending one year from that date.

i. Benefits shall not be paid for any absence from work occurring more than one year from the initial date of the injury or illness, even if the aggregate period of disability does not exceed one year.

ii. In cases of disorders as set forth in (c)4 below, the one year period shall begin with the first date of disability from work.

4. An employee receiving SLI benefits may also be entitled to medical leave under Federal law. See N.J.A.C. 4A:6-1.21B.

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or condition of employment are compensable.

2. Preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or condition of employment, are not compensable except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

5. Psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation.

6. An injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent, including those injuries or illnesses arising from impairment due to alcohol or drug abuse.

(d) Any accident resulting in injury for which the employee seeks compensation must occur on the work premises.

1. Work premises are the physical area of operation of the appointing authority, including buildings, grounds and parking facilities provided by the State.

2. An injury occurring off the work premises is compensable only when the employee is engaged in authorized work activity or travel between work stations.

(e) For the injury to be compensable, it must occur during normal work hours or approved overtime.

1. Injuries which occur during normal commutation between home and the work station or home and a field assignment are not compensable.

2. Injuries which occur during lunch or break periods are not compensable. However, employees who are required by the appointing authority to remain at a particular job location during lunch and/or work-break shall not be precluded from receiving SLI benefits.

4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service

(a) An employee is required to report to his or her supervisor any work accident or condition claimed to have caused disability upon occurrence or discovery, and is responsible for completing a written report on the matter within five days or as soon as possible thereafter. The report shall include a statement of when, where and how the injury or illness occurred, statements of witnesses and copies of all medical reports concerning the injury or illness.

(b) The appointing authority shall review the request for SLI benefits based on the standards in > N.J.A.C. 4A:6-1.6, and within 20 days of receipt of the request:

1. Grant the request, notify the employee in writing and forward its recommendation to the Department of Personnel which, upon review, shall notify the employee and appointing authority whether or not the benefits have been approved; or

2. Deny the request and advise the employee in writing of the reasons for the denial and of the right to appeal to the Merit System Board within 20 days of receipt of the determination.

(c) The appointing authority's recommendation for approval of SLI benefits must be accompanied by:

1. All personal injury reports;
2. A record of the employee's lost time;
3. A detailed explanation of the incident;
4. All pertinent physician reports; and
5. A completed "Request for Employment Disability Leave."

(d) The appointing authority may require the employee to be examined by a physician designated and compensated by the appointing authority.

(e) An employee may appeal an appointing authority denial of SLI benefits to the Merit System Board in accordance with > N.J.A.C. 4A:2-1.1 et seq.

(f) An employee or appointing authority may appeal a Department of Personnel denial of SLI benefits to the Merit System Board in accordance with > N.J.A.C. 4A:2-1.1 et seq.

(g) In all appeals, copies of all materials submitted to the Merit System Board shall be provided to all other parties.

(h) The burden of proof is on the appellant to establish entitlement to SLI benefits by a preponderance of the evidence.

(i) In accordance with the Americans with Disabilities Act, > 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the eligibility of the employee for benefits under this section;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy. For medical leave under Federal law, See N.J.A.C. 4A:6-1.21B.

1. An employee may use accrued sick, vacation or administrative leave for pregnancy-disability purposes but shall not be required to exhaust accrued leave before taking a leave without pay.

2. An employee must exhaust all accrued sick leave to be eligible for New Jersey Temporary Disability Insurance.

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. For family leave under State law, See N.J.A.C. 4A:6-1.21A. For Federal family and medical leave, See N.J.A.C. 4A:6-1.21B.

4A:6-1.9 Administrative leave: State service

(a) Full-time State employees in the career and senior executive service and those employees of Rutgers, the State University, New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

1. Priority in granting such leave requests shall be:

i. Emergencies;

ii. Religious holidays;

iii. Personal matters.

2. Employees hired during the calendar year shall be granted one-half day of administrative leave for each full calendar month of employment up to a maximum of three days' leave for the remainder of the calendar year. Thereafter, administrative leave shall be credited at the beginning of each calendar year.

3. Administrative leave may be granted and shall be recorded and tracked in hours. See N.J.A.C. 4A:6-1.5(f) for adjustments in the administrative leave entitlement when an employee's workweek changes.

(b) Unclassified employees may be granted up to three days of administrative leave in each calendar year, at the discretion of the appointing authority.

(c) Part-time employees shall be entitled to a proportionate amount of paid administrative leave. See N.J.A.C. 4A:3-3.8(e) for paid administrative leave to which employees in intermittent titles are entitled.

(d) Use of administrative leave must be approved by the appointing authority and cannot be unreasonably denied.

(e) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall not be required to reimburse the State for days already used.

1. An employee leaving State service due to an intergovernmental transfer pursuant to > N.J.A.C. 4A:4-7.1A shall not receive compensation based on any unused administrative leave, nor shall the administrative leave be transferrable.

(f) Administrative leave may be taken in conjunction with other types of paid leave.

4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Department of Personnel.

1. An appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Such leaves

may be extended up to an additional six months, upon request of the appointing authority and written approval by the Department of Personnel, in cases of personal illness or disability. Leave without pay for nonpermanent employees may be terminated at any time.

2. Leave for union office for permanent and nonpermanent employees, pursuant to > N.J.A.C. 4A:6-1.16, may be for periods longer than those specified in (a) and (a)1 above, as provided in the negotiated agreement.

(b) Employees in the senior executive and unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority.

(c) An appointing authority may permit an employee to return from a leave of absence without pay prior to its conclusion.

(d) Appointing authorities shall set procedures subject to review by the Department of Personnel for leave without pay.

(e) For family leave under State law, See N.J.A.C. 4A:6-1.21A. For Federal family and medical leave, See N.J.A.C. 4A:6-1.21B.

4A:6-1.11 Military leave

(a) For purposes of this section, a “permanent employee” shall mean:

1. In the career service, an employee who:

i. Has achieved permanent status in accordance with N.J.A.C. 4A:4-1.1;

ii. Is serving a working test period and has permanent status in another title;

or

iii. Is serving a provisional appointment and has permanent status in another title.

2. In the unclassified or senior executive service, an employee appointed for an indefinite term.

(b) Regarding military service for members of New Jersey’s Organized Militia, including the National Guard:

1. A permanent employee or a full-time, temporary employee who has served for one year or more, who is a member of the national guard or other component of the organized militia of the State of New Jersey, shall be entitled to a leave of absence with pay not to

exceed 90 work days in the aggregate in any one calendar year for any period of Federal active duty, and unlimited paid leave in the case of State active duty. Active duty shall not include inactive duty training such as weekend drills. See N.J.S.A. 38A:4-4. The Adjutant General of the New Jersey Department of Military and Veterans Affairs shall determine the definition of Federal and State active duty. See N.J.A.C. 5A:2-2.1. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing authority and an employee may mutually agree to reschedule an employee's work time to accommodate the employee's military leave.

(c) Regarding military service for reservists other than New Jersey National Guard members:

1. A permanent employee or a full-time, temporary employee who has served for one year or more, who is a member of the organized reserves of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States or other affiliated organizations, including national guard units of other states, shall be entitled to a leave of absence with pay not in excess of 30 work days in the aggregate in a calendar year when he or she shall be engaged in any period of Federal active duty. Federal active duty shall not include inactive duty training such as weekend drills. See N.J.S.A. 38:23-1. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing authority and an employee may mutually agree to reschedule an employee's work time to accommodate the employee's military leave.

(d) Regarding service and reemployment for all members of the military in time of war or emergency:

1. An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters either Federal or State active military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 38 U.S.C. §§ 4301 et seq.

4. To the extent that a member of New Jersey's organized militia, including the New Jersey National Guard, has not exhausted 90 days of paid leave in accordance with (b) above, or a reservist has not exhausted 30 days of paid leave in accordance with (c) above, the member or reservist shall be permitted paid leave in accordance with, as applicable, (b) or (c) above, and also shall be afforded the rights of military members in accordance with (d)1 through 3 above.

(e) An employee is entitled to a leave of absence without pay for such other military duty not covered by (b), (c) or (d) above.

1. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(f) During any leave of absence pursuant to (b) through (e) above, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title, and any leave of absence granted to the employee shall be in addition to other time off allowed such employee.

(g) For military leave regulations promulgated by the New Jersey Department of Military and Veterans' Affairs, see N.J.A.C. 5A:2.

4A:6-1.12 Leave for appointment by Governor

When a permanent employee or an employee in the senior executive service is appointed by the Governor to an office, the appointing authority shall grant and record a leave of absence without pay for the period of appointment, provided that the employee requests such a leave of absence prior to the appointment. Upon the expiration of the leave, the employee shall have the right to return to the former title and receive all the rights, privileges and benefits of that title as if he or she had remained in that title. See N.J.S.A. 52:14-16.2.

4A:6-1.13 Convention leave

(a) Every employee in the career, senior executive or unclassified service who is a duly authorized representative shall, upon request, be granted a leave of absence with pay for a period of up to five days in any calendar year to attend any State or national convention of any one or more of the organizations listed in > N.J.S.A. 38:23-2. The five days shall include necessary travel time. Written notice from the appropriate organization indicating that the employee is a duly authorized delegate shall be submitted to the appointing authority prior to the convention. A certificate of attendance shall be submitted to the appointing authority after the convention indicating the delegate's attendance.

(b) An employee who is a duly authorized representative of the New Jersey Policemen's Benevolent Association, Inc.; the Fraternal Order of Police; the Firemen's Mutual Benevolent Association, Inc.; or the Professional Fire Fighters Association of New Jersey shall be granted a leave of absence with pay to attend a State or national convention of one or more of those organizations; provided, however, that:

1. No more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than

10 authorized representatives shall be entitled to such leave, unless more than 10 authorized representatives are permitted such leave pursuant to an agreement between the appointing authority and negotiations representatives.

2. For employee organizations as with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave.

(c) The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, except that such leave shall be for no more than seven days. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending. See > N.J.S.A. 11A:6-10 and > 40A:14-177.

(d) Persons designated by the Governor shall be granted leaves of absence to attend the convention of the American Correctional Association (American Prison Association). See > N.J.S.A. 30:4-178.

(e) Any full-time teaching staff member, secretary or office clerk of any local school district who applies to his or her board of education shall be granted a leave of absence with pay to attend the convention of the New Jersey Education Association. Such leave shall not exceed two days within any one calendar year. The employee must file a certificate of attendance with the board of education. The certificate must be signed by the executive secretary of the association for the employee to receive paid leave. See > N.J.S.A. 18A:31-2.

4A:6-1.14 Education leave: State service

In State service, an appointing authority may, with Department of Personnel approval, grant an employee in the career, senior executive or unclassified service education leave with or without pay for the purpose of obtaining training that is of direct value to the State but is not available through State inservice training programs. See N.J.A.C. 4A:6-4.6 for tuition aid programs.

4A:6-1.15 Leave for athletic competition: State service

(a) Any State employee in the career, senior executive or unclassified service who qualifies as a member of the United States team for athletic competition at the world, Pan American or Olympic level, in a sport contested in either Pan American or Olympic competitions, shall be granted a leave of absence with pay for the purpose of preparing for and engaging in the competition.

(b) Such paid leave shall be no more than 90 calendar days in one year or the combined days of the official training camp and competition, whichever is less.

4A:6-1.16 Leave for union office

An appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period for such leaves shall be a subject of negotiation between the employer and union.

4A:6-1.17 Leave for elective office: local service

(a) A permanent employee in local service shall be granted a leave of absence without pay to fill elective public office for the term of the office.

1. The employee shall be entitled to return to his or her permanent title within six years from the date the leave begins, provided that a written request to return is submitted to the appointing authority before the leave expires. If the term of the elective office exceeds six years, the employee's name shall be placed on a special reemployment list at the expiration of the six years.

2. The employee shall continue to accrue seniority in his or her permanent title for a maximum of six years.

3. An employee who had taken a promotional examination before being granted the leave may be appointed to the promotional title from the resulting list and shall begin the working test period upon return from the leave.

4. Any appointments to fill the position of the employee during the leave shall be made from appropriate eligible lists, but any such appointments shall be interim and shall terminate upon the return of the employee on such leave to the permanent title.

4A:6-1.18 Leave for emergency civilian duty: State service

(a) State employees in the career, senior executive or unclassified service who are certified disaster service volunteers of the American Red Cross shall be given a leave of absence with pay for up to 10 days in a year and an additional leave of absence without pay for up to 10 days in a year at the request of the American Red Cross and upon approval of the appointing authority to participate in specialized disaster relief services if one of the following conditions are met:

1. The disaster relief services are to be performed in the State;

2. The disaster is a Federal or presidentially declared disaster designated as Level III or above, in accordance with American National Red Cross regulations and procedures; or

3. The disaster is declared by the governor of a state or territory.

(b) State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency, other than the duty described in (a) above, when so ordered by the Governor or by the President of the United States.

1. Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.19 Leave for jury duty: State service

(a) State employees in the career or senior executive service shall be granted leave with pay for the time required to attend jury duty that is scheduled during work hours. Time required for jury duty includes actual time spent in commuting.

(b) Employees who are required to attend jury duty during the work shift immediately preceding or following his or her scheduled work shift wholly within the same day shall be excused from the scheduled work shift. If the employee's scheduled work shift extends from one day to the next and does not immediately precede or follow the period during which an employee must attend jury duty, the employee shall choose and be granted leave from his or her work shift that is scheduled either before or after jury duty.

(c) Employees shall be granted up to their normal number of work hours in any one day to attend jury duty. Employees who do not work on a fixed workweek schedule may be granted up to eight hours' leave in any one work day.

(d) Employees shall submit to their appointing authority written verification of attendance signed by a representative of the court.

(e) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.20 Leave to appear as a witness: State service

(a) State employees in the career or senior executive service shall be granted time off with pay to appear as a witness or a party before a judicial or administrative body or legislative committee when such appearance is part of the job function. If an employee appears as a witness or a party during his or her normal day off, the employee shall be compensated as provided in the rules governing overtime compensation. See N.J.A.C. 4A:3-5.

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party. However, an employee is entitled to time off with pay to attend his or her workers' compensation proceeding.

(c) State unclassified employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.21 Family leave

(a) The following two sections include informational provisions on two leave programs: family leave (FLA) under State law (> N.J.A.C. 4A:6-1.21A), and family and medical leave (FMLA) under Federal law (> N.J.A.C. 4A:6-1.21B). It is the responsibility of every appointing authority to determine the extent to which one or both leave programs are applicable to the situation of an employee requesting leave, or whether neither program is applicable. If one or both programs are applicable, it is also the responsibility of the appointing authority to record the leaves appropriately and implement the applicable law(s).

(b) Following are examples of the interaction of the FMLA and FLA:

EXAMPLE ONE: A State employee needs to take leave for the birth of a child in 1994 and the birth of another child in 1995. If the employee is eligible for leave under both State and Federal laws, the employee may utilize the 12-week entitlement in 1994, which counts against leave under both laws. The State must comply with applicable provisions of both laws. More generous provisions of the FMLA, such as those on intermittent and reduced leave, apply.

In 1995, the employee is not entitled to family leave under State law because State law only permits 12 weeks of family leave in a two-year period. However, the employee is entitled to family leave under Federal law because the FMLA permits a family leave of 12 weeks in a 12-month period.

Leave during 1994 is recorded as both FLA and FMLA. Leave during 1995 is recorded as FMLA only.

EXAMPLE TWO: A municipal employee suffers from a serious health condition which makes the employee unable to perform his job duties. If the employee meets the criteria for eligibility under the FMLA, the employee is therefore entitled to 12 weeks of medical leave. This leave does not count against the employee's entitlement under State law because State law does not provide for leave for an employee's own serious health

condition. Therefore, during the same 12-month period, if the employee needs to take leave because of the serious health condition of a child, the employee is entitled to 12 weeks of such leave under State law as long as the employee meets the criteria for eligibility.

EXAMPLE THREE: A State employee is disabled due to her pregnancy and is unable to work. The employee needs to take 12 weeks of leave for this reason. If the employee is eligible for medical leave under the FMLA, then the 12 weeks of pregnancy-disability leave will count toward her FMLA entitlement for that 12-month period. If she thereafter wishes to take 12 weeks of leave to care for her new child and is eligible for family leave under State law, she may then take 12 weeks of family leave. However, if the employee needs additional leave for child care, she may apply for leave without pay for this additional leave. The appointing authority may, but is not required to, grant such additional leave, since the employee has exhausted her leave entitlements under both State and Federal law. See N.J.A.C. 4A:6-1.10.

EXAMPLE FOUR: Joe is employed by the State Department of Insurance. His wife Jill is employed by the Department of State. Joe takes three weeks of leave to care for his seriously ill mother. Jill takes three weeks of leave to care for her newborn child. These three weeks are recorded on both of their records as State family leave (FLA) and Federal family leave (FMLA). They have remaining a combined total of six weeks of FMLA leave if used to care for their newborn child. However, if either is unable to work due to a serious health condition, each has nine weeks of FMLA leave remaining for that purpose. Each has nine weeks of FLA remaining.

EXAMPLE FIVE: An employee gives birth to a child on January 1. On November 1, she commences leave to care for her child, and completes this leave 12 weeks later. Her leave through December 31 is recorded as both FLA and FMLA. After December 31, the leave is recorded only as FLA.

EXAMPLE SIX: An employee takes in a foster child on December 1. He wishes to take a leave to care for the child commencing the following November 1. This leave is recorded as FMLA only, and only lasts through the end of November.

EXAMPLE SEVEN: An employee's wife gives birth on January 1. He commences leave on January 10. This leave is recorded as both FLA and FMLA, for a 12 week total.

EXAMPLE EIGHT: John is covered under a negotiations agreement. He has taken 12 weeks of leave, to end on December 31, 1993 because of his own serious health condition. Then he has a relapse and, on February 10, 1994, requires further leave. The leave does not fall under the FLA at all. Prior to February 5, 1994, the leave is also not recorded as FMLA. The leave commencing on February 10, 1994 is medical leave and is recorded as FMLA.

EXAMPLE NINE: Susan is a nonrepresented managerial employee who commences leave on July 1, 1993 for care of a newborn and needs leave for the next 15 weeks. From July 1 through August 4, the leave is recorded as FLA only. From August 5 through September 22 (12 weeks after July 1) the leave is recorded as FLA and FMLA. From September 23 through October 13, this leave is recorded as FMLA only.

EXAMPLE TEN: Robert is taking six weeks of paid sick leave for major surgery and recuperation from the surgery. Robert has informed his employer about the reason for his leave. His employer has designated this paid sick leave as FMLA leave. Immediately upon doing so, the employer also notifies Robert of this designation.

4A:6-1.21A State family leave

(a) This section describes leaves for which employees in State and local service may be eligible, pursuant to the Family Leave Act, L.1989, c.261. The Division on Civil Rights, Department of Law and Public Safety, has promulgated rules to implement and enforce the Family Leave Act. See N.J.A.C. 13:14.

(b) The following definitions are used in this section:

1. "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a parent who is under 18 years of age or 18 years of age or older but incapable of self-care because of a mental or physical impairment.

2. "Employ" means to suffer or permit to work for compensation and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

3. "Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under the Family Leave Act, P.L.1989 c.261, for not less than 1,000 base hours during the immediately preceding 12-month period, and includes employees in the career, senior executive and unclassified services.

4. "Employer" means a legal entity which engages the services of an employee and which from May 4, 1990 to May 3, 1991, employed 100 or more persons; from May 4, 1991 to May 3, 1993, employed 75 or more persons; and from May 4, 1993 and thereafter employed 50 or more persons.

i. In State service, "employer" refers to the State of New Jersey. In local service, "employer" refers to the political subdivision or autonomous public officer, board or body.

5. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

6. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

- i. The birth of a child of the employee;
- ii. The placement for adoption of a child with the employee; or
- iii. The serious health condition of a family member of the employee.

7. "Family member" means a child, parent, or spouse.

8. "Intermittent leave" means a non-consecutive leave comprised of intervals, each of which is at least one but less than 12 workweeks within a consecutive 12-month period.

9. "Parent" means a person who is the biological parent, adoptive parent, foster parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, guardianship, or visitation with a child.

10. "Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, but not more than one workweek at a time.

11. "Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

12. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- i. Inpatient care in a hospital, hospice, or residential medical care facility; or
- ii. Continuing medical treatment or continuing supervision by a health care provider.

(c) An employee shall be entitled to a family leave of 12 weeks in any 24-month period, unless denied under (d) below.

1. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

2. An employee shall be entitled, at the option of the employee, to take family leave on a reduced leave schedule, in the case of a family member with a serious health condition.

i. The employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks.

ii. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employee and the appointing authority, if the leave is taken upon the birth or adoption of a healthy child.

iii. The employee shall make a reasonable effort to schedule reduced leave so as not to disrupt unduly the operations of the appointing authority and the employee shall provide the appointing authority with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member in a manner which is reasonable and practicable.

iv. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of family leave to which an employee is entitled.

EXAMPLE: An employee on a five day workweek schedule is entitled to a total of 12 weeks of family leave, or 60 working days. The employee takes reduced leave of two days per week for a total of 20 days. The employee remains entitled to 40 working days of family leave.

3. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

i. The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

ii. The employee provides the appointing authority with prior notice of the leave in a manner which is reasonable and practicable; and

iii. The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the appointing authority.

iv. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employee and the appointing authority.

4. See N.J.A.C. 13:14-1.10 concerning proof of need for family leave.

(d) Family leave may be denied to an employee if:

1. The employee is among the highest paid five percent of the employer's employees or the seven highest paid employees of the employer, whichever is greater;

2. The denial is necessary to prevent substantial and grievous economic injury to the employer's operations; and

3. The appointing authority notifies the employee of its intent to deny the leave at the time the appointing authority determines that the denial is necessary.

i. When leave has already commenced at the time of the notification pursuant to (d)3 above, the employee shall return to work within 10 working days of the date of notification.

(e) No employee shall, during any period of family leave, perform services on a full-time basis for any employer for whom the employee did not provide those services immediately prior to commencement of the leave.

(f) During a family leave, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee returns to work or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner.

(g) Except for health insurance as provided in (f) above, other employment benefits shall be available to employees on family leave without pay as are available to employees on all other leaves without pay.

(h) If a layoff occurs during a family leave, the employee shall retain all rights available under N.J.A.C. 4A:8 as if the employee had not taken the leave.

(i) Family leave without pay shall not be deducted from seniority for layoff purposes. See (c) above. For all other purposes, family leave without pay shall be treated the same as other leaves without pay.

(j) An employee may, at his or her option, use paid leave for family leave purposes. An employee who chooses to use paid leave (vacation, sick or administrative) must meet the requirements set forth in this subchapter for the type of leave requested.

4A:6-1.21B Federal family and medical leave

(a) The Federal Family and Medical Leave Act (FMLA), > 29 U.S.C. 2601 et seq., was effective on August 5, 1993, except for employees covered under a collective negotiations agreement, for whom the Act is effective on February 5, 1994, or the date

the agreement expires, whichever is sooner. This section is for informational purposes only, and addresses areas in which FMLA provisions differ from those under the State Family Leave Act (FLA). See N.J.A.C. 4A:6-1.21A. The U.S. Department of Labor has promulgated rules to implement and enforce the FMLA. See 29 CFR 825.

(b) Definitions, unique to this section, are as follows:

1. "Eligible employee" means an employee of the State or a political subdivision who has worked for the employer for at least 12 months for a minimum of 1,250 hours. In determining whether an employee meets this hours of service requirement, work not requested by an employer but suffered or permitted is work time for purposes of meeting this requirement. See 29 U.S.C. 207; > 29 CFR 785.11.

2. "Family leave" means a type of FMLA leave to which an eligible employee is entitled if the employee meets the conditions set forth in (d)1 or (d)2 below.

3. "Medical leave" means a type of FMLA leave to which an employee is entitled if the employee meets the conditions set forth in (d)3 below.

4. "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

5. "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

i. Any period of incapacity or treatment in connection with or resulting from inpatient care in a hospital, hospice, or residential medical care facility;

ii. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or

iii. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(c) Public agencies, including the State of New Jersey and political subdivisions, are covered employers without regard to the number of employees employed.

(d) An eligible employee of a covered employer is entitled to 12 weeks of FMLA leave in a 12-month period:

1. Because of the birth of a child or the placement of a child for adoption or foster care, except that the entitlement expires at the end of the 12-month period beginning on the date of birth or placement;

2. Because the employee is needed to care for a child, spouse or parent with a serious health condition; or

3. Because the employee's own serious health condition makes the employee unable to do his or her job.

(e) In State service, the 12-month period begins on the first day of FMLA leave.

(f) Leave may be taken intermittently or on a reduced leave schedule when medically necessary in the case of an employee who has a serious health condition or in the case of a child, spouse or parent who has a serious health condition.

1. Intermittent leave may last for as little as one hour or for as long as several weeks. A reduced leave schedule reduces the employee's hours per workweek or workday. No limit may be placed on the size of an increment of such leave, except that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for use of leave.

2. An employee may take leave in this manner for the birth or placement of a child for adoption or foster care only if the employer agrees.

(g) Special conditions related to FMLA leave are as follows:

1. A husband and wife who both work for the same employer are permitted to take a combined total of 12 weeks of FMLA leave in a 12-month period for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. However, following the use of a portion of the 12-week leave entitlement for one of these purposes, the husband and wife will each be entitled to the difference between the leave taken individually by them and their 12-week entitlement if the additional leave is for a different FMLA purpose (such as their own serious health condition).

2. Employers shall keep FMLA records for no less than three years and shall make them available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request. These records shall include all of the following:

i. Basic payroll and identifying employee data;

ii. Dates FMLA leave is taken by employees. FMLA leave shall be designated as such in the employer's records and shall not be placed in the same category as other leaves. A general designation, such as "sick leave," does not fulfill this requirement;

iii. The hours of the FMLA leave, if the leave is taken in increments of less than one full day;

iv. Copies of employee notices of leave which fall under the FMLA;

v. Copies of all general and specific notices given to employees as required under the FMLA and > 29 CFR 825.300 et seq.;

vi. Any written or electronic documents describing employee benefits or employer leave policies outside of leave provisions found in N.J.A.C. 4A:6 et seq.;

vii. Premium payments of employee benefits; and

viii. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

3. If the employer has a uniformly applied policy governing outside employment, such a policy may continue to apply to an employee while on FMLA leave. Otherwise, an employer may not deny benefits to an employee who is entitled to leave because the employee has outside employment.

4. The enforcing agency for FMLA leave is the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Any complaints related to this leave shall be made to that agency. Standardized forms are available from that agency for use by employers.

(h) If an employee qualifies under both Federal and State law, the leave used counts against the leave's entitlement under both laws, provided that nothing in the FMLA supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall notify the employee that the paid leave has been designated as FMLA leave within two work days of the time the employee gives notice of the need for leave, and before the employee commences the leave, unless the employer does not have sufficient information within that time to make a determination.

1. If the employer does not have sufficient information regarding the employee's reason for taking the paid leave, the employer shall notify the employee of the FMLA designation, if any, as soon as such information is obtained.

2. If the employer has sufficient information to make such a designation but does not do so within the timeframes indicated above, the employer shall designate the paid leave as FMLA leave prospectively as of the date of notification to the employee.

(j) In State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. For all other purposes, FMLA leave without pay shall be treated the same as other leaves without pay.

4A:6-1.22 Donated leave program

(a) A State employee shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous State service;
2. Has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off;
3. Has not, in the two-year period immediately preceding the employee's need for donated leave, been disciplined for chronic or excessive absenteeism, chronic or excessive lateness or abuse of leave; and
4. Either:
 - i. Suffers from a catastrophic health condition or injury;
 - ii. Is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury; or
 - iii. Requires absence from work due to the donation of an organ (which shall include, for example, the donation of bone marrow).

(b) For purposes of this section, a "catastrophic health condition or injury" shall be defined as follows:

1. With respect to an employee, a "catastrophic health condition or injury" is either:
 - i. A life-threatening condition or combination of conditions; or
 - ii. A period of disability required by his or her mental or physical health or the health of the employee's fetus which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.

2. With respect to an employee's immediate family member, a "catastrophic health condition or injury" is either:

- i. A life-threatening condition or combination of conditions; or
- ii. A period of disability required by his or her mental or physical health which requires the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

(c) A State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the appointing authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from either the catastrophic health condition or injury, or the donation of an organ, as the case may be.

2. When the appointing authority has approved an employee as a leave recipient, the appointing authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time, and shall provide notice to all negotiations representatives in that appointing authority.

i. If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

(d) In State service, a leave recipient must receive at least five sick days or vacation days or a combination thereof from one or more leave donors to participate in the donated leave program. A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

4. If a leave donor is not in the same department or autonomous agency as the leave recipient, appropriate arrangements shall be made between the affected appointing

authorities to verify donor eligibility and adjust leave records. However, the posting requirement set forth in (c)2 above is limited to the recipient's appointing authority.

(e) While using donated leave time in State service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

(f) A State employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

(g) In local service, an appointing authority may establish a donated leave program which shall be consistent with the provisions of (a) through (f) above, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner a donated leave program proposal no later than 30 days before the planned implementation of the program. The proposal shall include a summary of consultations with affected negotiations representatives concerning the program and name the donated leave program administrator for the appointing authority.

2. The appointing authority shall not implement a donated leave program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved donated leave program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the donated leave program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough program which may differ in detail but which shall be consistent with the purpose of these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

- i. Shorter work days;
- ii. Intermittent days off; or
- iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

- i. As sick leave;
- ii. As a leave without pay due to disability; or
- iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough or furlough extension leave for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough or furlough extension leave shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. The employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension's days in accordance with the regulations of the State Health Benefits Commission.

2. Furlough extension leave may be used for education or family care needs only.

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the Department of Personnel.

(e) An employee on a voluntary furlough or furlough extension leave shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(f) In State service, the anniversary date of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6.

(g) The seniority of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and > N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(h) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to the voluntary furlough or furlough extension leave. See N.J.A.C. 4A:4-5.

(i) In State service, an employee on a voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(j) See N.J.A.C. 17:9-4.2, 8.3 and 9.1 for State health benefits coverage during a voluntary furlough.

(k) Once an employee has used the equivalent of 30 days for a voluntary furlough and the equivalent of 60 days for a furlough extension leave in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with > N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with > N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough and furlough extension leave, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave), 1.3 (sick leave), 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); and 4A:4-2.15 (seniority in rating of examinations) and 4A:8-2.4 (seniority in layoffs).

4A:6-1.24 School volunteer leave

(a) State employees in the career, senior executive or unclassified service shall be granted leave with pay, up to a maximum of 20 hours per calendar year, to volunteer in an academically beneficial school activity.

1. In local service, an appointing authority may establish a school volunteer leave program.

(b) An academically beneficial school activity, for purposes of this section, includes, but is not limited to, helping a teacher in the classroom, as well as the following activities held at the schools: reading to children; tutoring; assisting students with homework; mentoring; serving as a guest speaker; advising students on careers; or assisting with extra curricular or coaching activities.

1. School volunteer leave is not intended to be used for such activities as parent teacher conferences back-to-school nights, field trips or attending class performances.

2. Activities may take place at any New Jersey public, private or parochial school, through grade 12.

3. The volunteer program shall be approved by the local board of education or, in the case of a private or parochial school, the appropriate administrative authority for that school.

4. The State employee need not be a parent of a child in the school in which the volunteer activity is being performed. However, employee participation in the volunteer program shall be subject to approval by the school principal or designee.

(c) State appointing authorities shall establish procedures for school volunteer leave, subject to the following:

1. Leave shall be requested in advance, and shall be granted consistent with the operational needs of the appointing authority.

2. Employee participation shall be verified in writing by the school principal or designee.

3. Paid leave under this section shall not be granted for time spent travelling to and from the school. Vacation leave, administrative leave, and leave without pay may be used in conjunction with school volunteer leave for travelling time.

4A:6-2.1 General provisions

(a) In local service, appointing authorities, subject to applicable negotiations requirements, may establish the hours of work.

(b) In State service, this subchapter applies to all employees in the career, senior executive or unclassified service.

1. The number of hours comprising the normal workweek for each job title shall be indicated in the State compensation plan.

2. For State overtime and holiday pay procedures, See N.J.A.C. 4A:3-5.1 et seq.

4A:6-2.2 Fixed workweek (35, 40, 3E or 4E) job titles: State service

(a) Job titles which meet all of the following criteria shall be assigned a fixed workweek of either 35 or 40 hours:

1. The work schedule is consistently regular, amenable to administrative control and determined by the direction of a supervisor rather than by the nature of the service and employees have minimal discretion over their work schedule;

2. The hours of work conform to a standard pattern of work time for the typical work location;

3. Employees normally work under direct supervision within a formal work program in a State office, location or place of business. Field work without direct supervision is minimal; and

4. An appointing authority can certify with assurance when an employee performs work beyond the normal workweek.

(b) Job titles which meet the criteria in (a) above are designated as 35 hours (35) or 40 hours (40), except those exempt from the Fair Labor Standards Act, 29 U.S.C. 20 et seq., are designated exempt 35 hours (3E) or exempt 40 hours (4E).

4A:6-2.2A Law enforcement work schedule (4L): State service

(a) Job titles which meet all of the following criteria may be assigned an alternate work schedule consisting of a 28-day cycle, pursuant to 29 U.S.C. § 207(k):

1. Employees are uniformed or plainclothes members of a body of officers and subordinates;

2. Employees are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury and to prevent and detect crimes;

3. Employees have the power to arrest; and

4. Employees have participated in a special course of instruction or study (or will undergo on-the-job training) which typically includes: self defense, physical training, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Job titles which meet the criteria in (a) above and which are assigned such an alternate work schedule shall be designated 4L. All employees who meet the criteria are considered engaged in law enforcement activities regardless of their rank or their status as trainee, probationary or permanent employees.

1. The tour of duty within the 28 day cycle shall total at least 160 hours. At the discretion of the appointing authority, employees who work more than 160 hours may be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of such additional work time.

2. Within the 28 day cycle, employees can work a maximum of 171 hours. Employees may work more than 40 hours in a week without incurring overtime, so long as they do not work more than 171 hours within the 28 day cycle. Overtime begins on the 172nd hour.

3. Except for the special eligibility requirements set forth above, overtime compensation shall be paid in the same manner as employees in 40 hour workweek titles. See N.J.A.C. 4A:3-5.5(b).

4A:6-2.3 Non-limited (NL, NE or N4) job titles: State service

(a) Titles in the following categories shall be assigned a non-limited workweek:

1. Titles in which employees have direct or delegated responsibility for the management of a State governmental unit or a professional level program, including deputies, assistants and staff administrative titles at management levels who are authorized to assume many of the functions performed by their supervisor. This category could include supervisory professional titles above the level of crew leader and clerical supervisor;

2. Non-management titles which do not meet all of the criteria for a fixed workweek set forth in > N.J.A.C. 4A:6-2.2(a);

3. Sworn unclassified employees of the State police;

4. Military titles in the Department of Defense in which employees are required to be on duty in support of National Guard units; and

5. Titles in which schedules of work vary considerably between a prime and a slack work season.

(b) Non-limited titles are those titles having irregular or variable work hours. Such titles shall be designated as follows:

1. Non-limited (NL) titles are those titles in which employees work at least a 35 hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

2. Non-limited, 40 hour (N4) titles are those in which employees work at least a 40-hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

3. Non-limited, non-exempt (NE) titles are those titles which are subject to the provisions of the Fair Labor Standards Act, > 29 U.S.C. 201 et seq.

4A:6-2.4 Holidays: State service

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis.

(b) Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as follows:

1. Holiday pay shall be paid at the end of a bi-weekly pay period and shall be calculated by dividing the number of hours the employee was in regular pay status in that pay period by the number of hours which a full-time employee would work during that pay period, and then multiplying that amount by the number of holiday hours for that pay period.

2. An intermittent employee who has resigned, been removed or been laid off prior to the last day of the pay period shall not receive holiday pay for that pay period.

(c) When an authorized State holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. When an authorized holiday falls on a Sunday, the following Monday shall be observed as the holiday.

(d) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday. An employee on a voluntary furlough or a furlough extension leave on the day before a holiday shall receive pay for the holiday as long as the employee is in pay status during the pay period in which the holiday falls.

4A:6-2.5 Inclement weather or emergency conditions: State service

(a) The Governor or his or her designee, in consultation with the Office of Emergency Management, shall determine whether a period of inclement weather or other adverse situation requires the curtailment of State operations and services and whether emergency procedures need be implemented.

1. This determination shall include whether the curtailment shall be Statewide, regional, specific to one or more facilities, or limited in some other manner.

2. The Office of Emergency Management shall notify all State departments and agencies, and appropriate media outlets, when the curtailment of State operations and services and/or an Essential Employee Attendance Plan are to be implemented.

(b) For purposes of this section, the following definitions shall apply:

1. "Essential Employee Attendance Plan" shall mean that portion of a department or agency's procedures for operating during a period of inclement weather or other adverse situation that explains the responsibilities, requirements and expectations of essential attendance employees in the event that the Governor determines that a period of inclement weather or other adverse situation requires the curtailment of State operations or services.

2. "Inclement weather or other adverse situation" shall mean an actual or imminent change in the weather or an actual or imminent change in other conditions or circumstances that is serious enough to disrupt all or a portion of the functions of State government.

(c) Each State department and agency shall annually review its criteria for the designation of essential attendance employees and, based on these criteria, update its roster of such employees. Employees so designated shall be notified no later than October 31 of each year of this designation and shall at that time be provided with a copy of the department or agency's Essential Employee Attendance Plan. The Plan shall include the responsibilities, requirements and expectations of such employees in the event that a period of inclement weather or other adverse situation requires the curtailment of State operations or services.

1. Each State department and agency shall provide the Department of Personnel and affected union representatives with its updated roster of essential attendance employees no later than November 15 of each year. The Department of Personnel shall make this information available to the Office of Emergency Management.

(d) An essential attendance employee who is required to work in accordance with an Essential Employee Attendance Plan shall be compensated at the regular rate of pay for such work. See N.J.A.C. 4A:3-5 for overtime compensation for work performed by non-exempt employees in excess of the regular workweek.

4A:6-2.6 Flexitime programs: State service

(a) Appointing authorities may establish flexitime programs to accommodate operational and/or employee needs, and shall provide for:

1. Core time, which is the period of time during which all employees must be present;

2. Flexible time, which is the period of time before and after the core time in which the employees may choose, subject to appointing authority approval, time of arrival and departure;

3. A meal period which may be flexible in duration and scheduling.

(b) An appointing authority may limit participation in a flexitime program to selected groups of job titles, work units and/or work locations to accommodate operational needs.

(c) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(d) Establishment, modification or termination of a flexitime program shall not become effective without the approval of the Commissioner. Requests for these actions shall be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the requested action to operational and employee needs;

2. Statement of impact on services to the public or agency clientele;

3. Details of the core time, flexible time and meal periods;

4. Groups of job titles, work units and/or work locations to be covered by the program;

5. Procedures governing employee participation in the program;

6. Approval procedures for individual flexitime schedules and changes;

7. Provisions for giving employees at least two weeks notice of termination of the program;

8. Monitoring and evaluation procedures; and

9. Name, address and telephone number of the program administrator.

(e) An appointing authority may authorize a complete or partial temporary suspension of the flexitime program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the Commissioner a fully detailed justification and specify the duration of the suspension.

(f) Appointing authorities should consult with affected negotiations representatives concerning flexitime programs before implementation.

(g) A description of an appointing authority's flexitime program shall be made available to employees upon request.

(h) Overtime compensation for employees in flexitime programs shall be regulated in the same manner as for all other employees.

4A:6-2.7 Alternative workweek programs: State service

(a) Appointing authorities may establish alternative workweek programs, such as a four day workweek, to accommodate operational and/or employee needs.

(b) A program may be developed for year-round use or for a specific portion of a year.

(c) An appointing authority may limit participation in an alternative workweek program to selected groups of job titles, work units and/or work locations to accommodate operational needs.

(d) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(e) Appointing authorities shall develop, subject to Department of Personnel approval, appropriate sick, vacation and administrative leave schedules for employees participating in an alternative workweek program.

(f) Since employees in an alternative workweek program have a longer or shorter workday than employees on a five day workweek schedule, a time differential exists on holidays. This differential shall be equalized in a manner determined by the appointing authority. If a holiday occurs on an employee's regular day off, he or she shall be granted an additional day off consistent with operational needs.

(g) Establishment, modification or termination of an alternative workweek program shall not become effective without the approval of the Commissioner. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include the same items listed in > N.J.A.C. 4A:6-2.6(d).

(h) An appointing authority may authorize a complete or partial temporary suspension of the alternative workweek program if required by operational needs. Within

10 days of the suspension of the program, the appointing authority shall submit to the Commissioner a fully detailed justification and specify the duration of the suspension.

(i) Appointing authorities should consult with affected negotiations representatives concerning alternative workweek programs before implementation.

(j) A description of an appointing authority's alternative workweek program shall be made available to employees upon request.

(k) Overtime compensation for employees in alternative workweek programs shall be regulated in the same manner as for all other employees, except as specified in > N.J.A.C. 4A:3-5.3.

4A:6-2.8 Adjusted hours of operation: State service

(a) Appointing authorities may adjust established hours of daily or shift operations to accommodate operational and/or employee needs.

(b) Department of Personnel assigned workweeks, for affected titles, for example, 35 or 40 hours, shall be retained.

(c) Except for emergency situations of limited duration, adjustments in hours of daily or shift operation shall not become effective without the approval of the Commissioner. Requests for these actions should be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the change to operational and employee needs;
2. Statement of impact on services to the public or agency clientele, employees and the community, that is, traffic flow;
3. Details of adjustments;
4. Work locations and approximate number of employees affected;
5. Provisions for giving employees at least two weeks written notice of adjustments; and
6. Name, address and telephone number of the program administrator.

(d) Appointing authorities should consult with affected negotiations representatives regarding adjustments in hours of daily or shift operations before implementation.

4A:6-3.1 Eligibility: State service

(a) The following employees shall be eligible for supplemental compensation on retirement ("SCOR"):

1. State employees in the career service and employees in the senior executive service with underlying permanent career service status;

2. State employees in job titles in the senior executive service without permanent career service status and in the unclassified service who have been granted sick leave under the following standards:

i. All employees in that job title are granted sick leave days in the same number and manner as set forth for State career service employees in > N.J.A.C. 4A:6-1.3;

ii. Sick leave for all employees in that job title is used, reported, and subject to verification in the same manner required for State career service employees in > N.J.A.C. 4A:6-1.4 and 1.5.

3. Employees of Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey, who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service, or who have been granted sick leave under the standards set forth in (a)2 above.

(b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.

1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR. However, the Commissioner may allow SCOR in such cases where removal was based on a medical disability or where the Commission finds sufficient mitigating circumstances to warrant supplemental compensation.

2. Employees who retire as a result of accidental or ordinary disability, and who meet all other applicable rules, shall be eligible for SCOR.

3. Employees of the University of Medicine and Dentistry of New Jersey who are members of the Newark Employees' Retirement System, and who meet all other applicable rules, shall be eligible for SCOR.

4. Employees who elect deferred retirement, or whose separation from employment is not based on retirement, shall not be eligible for SCOR.

5. Faculty members of the State Colleges; Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey who have served in an administrative capacity may be eligible for SCOR based on the time served in that administrative capacity only. Such employees, if deemed eligible, shall be entitled to payment based on sick leave and salary earned while serving in an administrative title.

4A:6-3.2 Break in service: State service

(a) Employees who incur a break in service due to resignation, retirement or removal shall have sick leave computed for SCOR purposes only from the date of return to employment.

1. Employees who have retired and received the maximum SCOR payment shall not be eligible for further supplemental compensation.

2. Employees who have retired and received less than the maximum SCOR payment shall be eligible for an amount no greater than the difference between the payment received and the maximum payment upon reentering State employment and again retiring from State service.

(b) Employees who incur a break in service due to layoff shall be credited for SCOR purposes with sick leave accrued both before separation and after return to employment.

4A:6-3.3 Computation of payment: State service

(a) SCOR shall be computed at the rate of one-half the employee's daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement. The daily rate of pay shall be based upon the average annual compensation received during the last full year of active employment prior to the effective date of retirement.

1. Overtime pay or other supplemental pay shall be excluded from the computation.

2. Periods of leaves of absence without pay shall be excluded from the computation.

(b) If an employee changes from 12 month to 10 month employment during the last year of employment, the average annual compensation must be weighted accordingly.

(c) Ten month employees who have received sick leave without proration shall have their unused accumulated sick leave reduced by one-sixth for purposes of calculating SCOR.

(d) The maximum amount of SCOR for any employee shall be \$15,000.

4A:6-3.4 SCOR procedures: State service

(a) An employee may file an application form DPF-279, within one year of the effective date of retirement, requesting supplemental compensation after receiving a copy of the official notice of retirement approval issued by the appropriate pension board or authority.

(b) The appointing authority shall not process the SCOR application form until it has received the employer's copy of the notice of the retirement approval. If the appointing authority has not received the employer's copy of the notice of retirement approval, it shall, within 45 days after receipt of the employee's application form DPF-279, notify the employee accordingly.

(c) After receipt of the notice of retirement approval and SCOR application, the appointing authority shall forward to the Department of Personnel within 45 days:

1. A personnel action request certifying the number of days of earned and unused accumulated sick leave and the amount of SCOR to be paid;
2. A copy of the notice of retirement approval; and
3. Completed application form DPF-279.

(d) The Department of Personnel shall review the request to ensure that eligibility criteria as set forth in > N.J.A.C. 4A:6-3.1 have been met.

1. If eligibility criteria have been met, the request shall be approved.
2. If eligibility criteria have not been met, the request shall be disapproved and the employee shall be provided written notice of the reasons for disapproval and the right to appeal to the Commissioner.

(e) Following approval of the SCOR application, payment shall be made by the appointing authority in accordance with established payroll procedures. The appointing

authority shall be responsible for withholding payment should the employee cancel the retirement.

(f) In the event of an employee's death after the effective date of retirement but before payment of SCOR is made, payment shall be made to the employee's estate.

(g) Payment of SCOR shall in no way affect any pension or retirement benefits for which a retired employee is eligible under any other program.

4A:6-3.5 SCOR: Intergovernmental transfers

(a) If an employee receives an intergovernmental transfer pursuant to > N.J.A.C. 4A:4-7.1A, sick leave carried to the receiving jurisdiction, where applicable, shall be included in the computation of any SCOR payments made by the receiving jurisdiction.

1. The SCOR payment of a retiring employee shall be made in accordance with the receiving jurisdiction's policy (for example, in State service, in accordance with > N.J.A.C. 4A:6-3.3).

(b) If an employee later returns to the sending jurisdiction, the employee shall have sick leave computed for SCOR purposes based on sick leave accumulated before and after the return.

4A:6-4.1 General provisions

(a) In local service, appointing authorities may implement Human Resource Development (HRD) programs and may, subject to the terms and approval of the Commissioner, participate in programs set forth in this subchapter.

(b) In State Service, the Commissioner shall establish training and education, performance evaluation and assistance programs for employees. The Commissioner shall also review and approve career development programs for employees. These responsibilities may be delegated to agencies other than the Department of Personnel only by written order of the Commissioner.

4A:6-4.2 Department of Personnel functions: State service

(a) The Commissioner shall administer a Human Resource Development Institute (HRDI or the Institute) which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order No. 12(1990) or by the Commissioner of Personnel through a written delegation order. The Institute shall

also be responsible for the planning, development, and delivery of all evaluation (see, for example, > N.J.A.C. 4A:6-4.5) and assistance programs (see, for example, > N.J.A.C. 4A:6-4.3 and 4.6) for State employees.

i. Delivery of training and education programs, evaluation programs and assistance programs shall be provided by pre-approved vendors or consultants. If no pre-approved vendor or consultant is available to deliver a specific program, the Institute shall negotiate the most cost-effective contract with an outside vendor or consultant to deliver the program. Under limited circumstances, Institute staff shall deliver training.

2. Review and approval of all career development programs for State employees.

3. Management of all ancillary operations, quality control efforts, facilities, and administrative support that are allocated to State Government training programs.

4. Coordination of State service programs for employees seeking agency, career, or location changes and for employees affected by job displacement.

(b) In cooperation with State agencies, the Human Resource Development Institute shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The Institute shall deliver or, consistent with (a)1i above, arrange the delivery of these programs as appropriate.

1. Neither agency employees nor outside vendors or consultants may develop or deliver training and education programs that the Institute is capable of developing or delivering, as provided in (a)1i above, without the prior written approval of the Institute director. If the Institute is not capable of developing or delivering, as provided in (a)1i above, a program of instruction that an agency needs, the institute director may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a pre-approved vendor or consultant for the same purpose. The Institute staff shall supervise and direct the delivery of any such program.

2. No State agency except the Institute may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. 12(1990) or by the Commissioner of Personnel through a written delegation order.

(c) The Institute shall establish guidelines and procedures for career development programs, help State agencies develop these programs, and review and approve career development plans and programs.

(d) The Institute shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1. Contribution to State government-wide goals and objectives.
2. Response to legitimate State government HRD needs.
3. Allocation of resources to areas of greatest need.
4. Achievement of desired changes in employee knowledge, skills, attitudes, and performance.

(e) The Institute shall maintain a comprehensive system to record the training and education experiences of its clients, including all State government employees.

(f) Each State agency may designate a customer liaison to the Institute, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the Institute.
2. Assist the Institute in setting HRD priorities related to the agency's mission and goals.

4A:6-4.3 Training and Education Programs: State Service

(a) State Government training and education programs include, but are not limited to, the following:

1. Employee orientation programs;
2. Agency specific technical and topical programs;
3. Programs mandated by State and Federal statutes;
4. Health and safety programs;
5. General training programs;
6. Computer and information systems training;
7. Basic literacy and remedial programs;
8. Clerical and support programs;
9. Apprenticeship programs;

10. Supervisory and management training; and

11. Executive training and development.

4A:6-4.4 Certified Public Manager Program: State service

(a) The Human Resource Development Institute shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The Commissioner of Personnel shall be Chief Administrative Officer of the program. The Director of the HRDI shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the Institute and an institution of higher education selected by the Department of Personnel.

(c) For that part of the program for managerial training, the employee shall be responsible for 25 percent of the cost and the department or agency for 75 percent of the cost, provided however that the HRDI Director may set a different cost allocation depending upon the fiscal condition of the department or agency. If a different cost allocation is set, HRDI shall notify affected departments or agencies prior to soliciting nominations for employee participants.

4A:6-4.5 Career Development Programs: State service

(a) Departments or agencies may, with the written approval of the HRDI Director and consistent with their goals, workforce planning and technological changes, implement programs that prepare employees to move to new assignments or career opportunities.

1. A department or agency shall seek written approval from the Institute Director for a program referred to in (a) above by submitting a written plan. This plan shall include the program's goals, objectives, target population, projected outcome and evaluation criteria for the program's success.

(b) Programs in support of career development include, but are not limited to, the following: tuition assistance (> N.J.A.C. 4A:6-4.6), employee interchanges (> N.J.A.C. 4A:6-4.8), and internships (> N.J.A.C. 4A:6-4.9).

4A:6-4.6 Tuition aid program: State service

(a) Each State department or agency, subject to available appropriations, shall establish a tuition aid program, available to eligible employees to complete undergraduate, graduate, technical or supplemental coursework at an accredited educational institution which relate to current or planned job responsibilities.

(b) The tuition aid program may be submitted for approval as part of the HRD plan (See N.J.A.C. 4A:6-4.3) or as a separate plan for approval by the Department of Personnel and shall include:

1. Employee eligibility criteria and acceptable grades and course completion for reimbursement;
2. Amount of funds allocated for tuition aid;
3. Name of the individual charged with administering the program;
4. Amount and form of reimbursement; and
5. Procedures for notifying employees of approval or disapproval.

(c) Any amendment to the plan must be submitted for approval at least one month prior to implementation.

(d) No employee shall receive tuition aid per semester in an amount that exceeds the cost of six credits at a New Jersey State College or Rutgers, the State University, whichever is higher.

(e) Reimbursement shall be made upon evidence of satisfactory completion of the courses as determined by the department or agency.

(f) Notice, eligibility and application procedures for tuition aid shall be posted throughout the department or agency.

(g) Each State department or agency shall also submit semi-annual reports to the Department of Personnel in such form and detail and according to such time schedule as the Department shall prescribe and include:

1. Names and titles of all employees receiving tuition aid;
2. Amount of aid received by each employee;
3. Equal employment and affirmative action data;
4. Information relating to the course and educational institution; and

5. Other information as may be requested by the Commissioner.

4A:6-4.7 (Reserved)

4A:6-4.8 Employee interchange program

(a) The Commissioner may approve an Employee Interchange Program that is intended to improve the management of government through shared experience, communication and learning among public, private and academic organizations. See N.J.S.A. 52:14-6.10 et seq. and N.J.S.A. 11A:2-11j.

(b) An appointing authority is authorized to participate, either as a sending or receiving agency, in an interchange program with any federal, State or local governmental or private sector entity.

(c) An interchange program shall provide that:

1. The length of any interchange shall not be more than 12 months or less than two months. The Commissioner may approve an assignment of less than two months in emergency situations. The Commissioner may extend an interchange for up to an additional six months to complete work in progress.

2. The participating employee shall remain an employee of the sending agency from which he or she shall receive salary and all benefits.

i. A receiving agency may reimburse the employee for travel expenses.

ii. The sending agency may receive reimbursement from the receiving agency for the salary and benefits of the employee. Such reimbursement shall be determined by agreement between the sending and receiving agencies. The agencies may also agree to provide housing or relocation assistance for the employee.

3. No interchange may be initiated without written consent of the participating employee.

4. A participating employee shall remain in the employ of the sending agency for a period of at least one year after the end of the interchange.

(d) An employee may not be assigned to an interchange program for more than 12 months in any 36-month period, unless the length of the interchange is extended by the Commissioner pursuant to (c)1 above.

(e) An employee interchange may be terminated by either the receiving or sending agency by giving 30 days written notice to the other agency, the employee and the Department of Personnel.

(f) The New Jersey Conflict of Interest Law (> N.J.S.A. 52:13D-12 et seq.) shall be applicable to all participating State employees and to Federal, local or private sector employees serving with a State agency.

4A:6-4.9 Internship programs: State service

(a) Internship programs include:

1. Programs limited to full time students of participating accredited institutions of higher education who are performing services for a State department or agency directly related to their course of study;

2. Fellowships in managerial assignments to selected individuals based on established educational and career achievements; and

3. Educational or apprenticeship programs for State employees intended for career change or advancement or due to job displacement.

(b) A proposed internship program must be submitted in writing to the Commissioner by the agency head and include a detailed description of the program, its benefits, program participants, program costs and relevant data. The Commissioner may request additional information and may approve, disapprove or modify the request.

4A:6-4.10 Employee Advisory Service: State service

(a) The Department of Personnel shall establish an Employee Advisory Service (EAS) to assist State employees in achieving and maintaining the highest level of job performance of which they are capable. EAS shall provide access to counseling, rehabilitative and/or community services for a State employee who:

1. Has received an annual performance rating at the lowest level. See N.J.A.C. 4A:6-5.1 et seq.

2. Has received a performance rating which is below the mid-point on the multi-level scale and an improvement plan has not been effective;

3. Is experiencing personal problems which affect job performance; or

4. Has a family member who is experiencing personal problems which affect the employee's job performance.

(b) Employees may voluntarily contact EAS or may be referred to EAS by the appointing authority. If the employee consents, he or she may be referred by a union or association representative. An employee should be referred to EAS as soon as problems are manifested which may affect job performance.

(c) Except as conditioned below or where there is an overriding health or safety need, all EAS information regarding an employee is confidential.

1. An employee may authorize in writing the release of all or part of such information.

2. In appointing authority referrals, the appointing authority may be informed:

i. Whether an individual has been accepted for a program;

ii. Whether or not an employee has kept his or her appointments;

iii. The dates and times of future appointments with either EAS or an outside agency; and

iv. The estimated amount of time needed to complete the program if reasonably ascertainable.

(d) Appointments for appointing authority referred employees shall be scheduled through the personnel office.

1. An employee shall be given time off with pay for the intake and evaluation visits. For other situations and visits, arrangements shall be set by the employee and appointing authority, which may include use of available sick or other leave.

2. When an appointing authority referred employee fails to keep a scheduled appointment or does not accept a referral from EAS, the appointing authority shall be notified of the matter by EAS.

(e) EAS shall monitor the progress of all employees. To maintain active client status, an employee must follow the prescribed EAS program.

(f) An appointing authority that is informed that an employee is receiving services through EAS, shall consult with the supervisor of the EAS program prior to seeking removal of the employee.

(g) State health or other benefit programs may be utilized where applicable.

4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Department of Personnel in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.

2. The PAR program shall use standardized forms and rating scales for different performance appraisal models to be designated by the Department of Personnel and a three-level rating scale to include the following ratings:

- i. Exceptional;
- ii. Commendable; and
- iii. Unsatisfactory.

3. Each agency shall establish standardized rating cycles with a duration of one year. Within a particular standardized rating cycle, employees shall be rated at the same time, twice a year, with the interim and final ratings being six months apart.

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to the Department of Personnel on all final PAR ratings of its employees in a form prescribed by the Department.

(d) The Commissioner may modify the PAR program based on specific employee or agency needs.

4A:6-5.2 PAR procedure: State service

(a) An employee and his or her supervisor shall jointly develop a job performance plan consisting of work assignments together with measurable performance standards. The employee shall be provided with a copy of the performance plan once established. If an employee disagrees with the established performance plan, he or she may note such disagreement.

(b) At the end of six months and at the end of one year, the employee and the supervisor shall review the employee's performance. The supervisor shall designate an interim performance rating at the end of six months and a final rating at the end of one year.

1. When there is a change either in job assignment or supervisor during the evaluation period, the old performance plan shall be closed out. The employee's performance during the portion of the rating period under the old performance plan shall be rated and a new performance plan shall be prepared. The final rating shall be a proration of all ratings received during the review period.

2. When there is a change in job title during the evaluation period, the former supervisor shall assign a final rating for the former performance plan and title. A performance plan for the new title shall be developed.

3. When appropriate, performance improvement plans shall be set at each review.

4. The employee shall be entitled to a copy of the rating.

(c) When a rating below the Commendable level is received, a performance conference shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) A performance plan for each rating period shall be established within a reasonable time after completion of the previous rating period. New employees shall receive a performance plan within a reasonable time after appointment.

1. The supervisor shall prepare a job performance plan prior to the commencement of the working test period which shall identify the job assignment, include the essential criteria for successful job performance, and emphasize training and development.

(e) A supervisor's own PAR shall provide that the supervisor shall complete the PAR of his or her subordinates. A supervisor who fails to timely complete the final ratings of his or her subordinates, or who is responsible for another employee's failure to timely complete a final PAR rating, shall receive a rating of Unsatisfactory, and may be subject to discipline.

(f) The Department of Personnel may require additional reports, information or audits of an agency's PAR program.

(g) A complaint that an entire agency or unit is in violation of this subchapter shall be presented to the PAR coordinator within the personnel office for the subject department. The PAR coordinator shall, within 30 days, investigate the complaint, respond in writing to the individual(s) presenting the complaint and implement remedial

action as appropriate. If the individual(s) is (are) dissatisfied with the response of the PAR coordinator, or if no action has been taken within 30 days of the complaint, the individual(s) may appeal the matter to the PAR Program Coordinator, Department of Personnel.

(h) Complaints concerning an individual's final PAR rating or performance standards shall be addressed through procedures set forth in > N.J.A.C. 4A:6-5.3(b) through (d).

4A:6-5.3 PAR use and review: State service

(a) An employee receiving an annual PAR rating below the Commendable level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving an Unsatisfactory rating but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating below the Commendable level should be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) Employees who are not represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable through noncontractual grievance procedures. See N.J.A.C. 4A:2-3.1. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) Employees who are represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable as a noncontractual grievance in accordance with the following procedures:

1. Step One grievance procedures shall be conducted as set forth in > N.J.A.C. 4A:2-3.4.

2. A grievant may appeal a Step One grievance decision to the PAR Joint Union Management Panel within 10 calendar days of receipt of the written decision at Step One, or a lack of timely response by the appointing authority. The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

i. The Joint Union Management Panel shall consist of one individual selected by the appointing authority, one individual selected by the affected negotiations

representative and one neutral individual jointly selected by the appointing authority and the affected negotiations representative.

ii. The panel shall meet, provided there are at least four Second Step appeals to be heard. The panel shall meet one additional day each month for every four additional appeals to be heard. When in any month there is no meeting because there are fewer than four appeals to be heard, there shall be a meeting the following month, so long as there are any cases to be heard.

iii. The appointing authority and union panel members shall discuss each appeal on the agenda and, with the assistance of the neutral panel member, attempt to jointly resolve the appeal.

iv. If the appointing authority and union cannot come to a joint resolution, the appeal shall be heard by the full panel. At any Second Step appeal hearing, the employee may be represented by a union steward, local union officer and/or local union staff representative.

v. The parties may call witnesses and present evidence at the Second Step appeal hearing. However, each hearing shall conclude within approximately four hours. The neutral panel member shall control the admission of testimony and evidence to ensure adherence to this time frame.

vi. The panel shall issue a written decision within 10 days of the hearing. Each panel member shall have one vote.

3. Appeals from decisions of the Joint Union Management Panel may be made to the Department of Personnel in accordance with > N.J.A.C. 4A:2-3.7(b).

(d) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable or induced by improper motives.

3. The Board shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(e) A rating of Unsatisfactory shall constitute evidence of incompetency, inefficiency or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(f) Performance ratings may be used as a factor in promotion (See N.J.A.C. 4A:4-2.15) and layoff (> N.J.A.C. 4A:8-2.2(c)4).

4A:6-6.1 General provisions

(a) In local service, appointing authorities may establish and administer awards programs.

(b) In State service, the following types of award programs are established:

1. Awards for Commendation;
2. Awards for Suggestions;
3. Service Recognition;
4. Other awards programs as the New Jersey Employee Awards Committee may establish; and
5. Department or agency awards programs approved by the New Jersey Employee Awards Committee.

(c) The awards program applies to all employees in the executive branch of State government, whether in the career, senior executive or unclassified service, including autonomous agencies within executive departments; applicable employees in the Judiciary; and all employees in the Office of Legislative Services.

4A:6-6.2 New Jersey Employee Awards Committee: State service

(a) The New Jersey Employee Awards Committee (Committee) shall be established in the Department of Personnel under the supervision of the Commissioner. The Committee shall consist of seven persons, each of whom shall be employed in a different department in the Executive Branch.

1. Committee members shall be appointed by the Governor upon nomination by the Commissioner, for staggered terms of three years or until a successor is appointed. If a vacancy on the Committee occurs by reason other than expiration of term, the vacancy shall be filled for the unexpired term. No member shall serve more than two consecutive full terms.

2. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses.

3. The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month unless there is no business to conduct or the Executive Secretary (Secretary) determines that agenda items are so routine that they may be held over to the next meeting. Special meetings may be held at the call of the Chairperson.

4. The Secretary shall submit monthly reports to the Commissioner concerning operations of the Awards Program, which shall include data on activity level, processing time, and program benefits to the State. This data will also be furnished to each agency's chief executive officer. The Secretary shall submit an annual report of the Committee's activities to the Governor through the Commissioner.

5. The administrative work of the Committee shall be performed by the Secretary and other necessary staff designated by the Commissioner.

(b) Departmental committees shall be established in each agency operating under the Awards Program, under the supervision and direction of the Committee. Divisional and institutional award subcommittees may be established within agencies, but the responsibility for the agencies' activities will remain with the departmental committees.

1. The departmental committees shall include at least three members appointed by the agency's chief executive officer for a term of one year, effective each May 18. Departmental committee members shall be employees who are responsible for evaluation and analysis of the agency's programs. The chairperson of the departmental committee shall be an individual who has direct access to the chief executive officer. When necessary, the services of a departmental committee member or other departmental employee with expertise in cost-benefit analyses shall be made available to the departmental committee.

2. Departmental committees shall meet at least monthly unless there is no business to conduct and shall establish procedures for the processing of awards within their agencies, in accordance with the rules in this subchapter and with the approval of the Committee.

3. Departmental committees shall be responsible for objectively and impartially investigating and evaluating each proposed suggestion or award nomination furnished to them by the Committee and returning a timely and documented recommendation to the staff of the Committee.

4. Departmental committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the awards program.

5. Departmental committees shall report their activities to the Committee through their chairpersons.

4A:6-6.3 Records: State service

(a) The Committee shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of all suggestions, as defined in > N.J.A.C. 4A:6-6.5, received by the Committee, along with supporting documents and recommendations from departmental committees.

(b) The departmental committees shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of each suggestion, as defined in > N.J.A.C. 4A:6-6.5, which is referred by the Committee, with supporting documentation and the recommendation of the departmental committee.

3. Records of all transactions and supportive documentation for Option No. 2 suggestions as defined in > N.J.A.C. 4A:6-6.6.

(c) Records shall be retained after the final action by the Committee in accordance with each department's record retention schedule. See N.J.A.C. 15:3-2.1 et seq.

4A:6-6.4 Commendation awards: State service

(a) Commendation Awards shall be established in, but not limited to, the following four categories:

1. Heroism Awards may be made to employees who perform acts of bravery or personal sacrifice of a life threatening nature above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

2. Exceptional Service Awards may be made to employees for outstanding acts of public service above and beyond the duties and responsibilities of the employee's position which shall include, but not be limited to, appropriate responses to a crisis or emergency situation and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

3. Professional Achievement Awards may be made to employees in recognition of meritorious or distinguished accomplishments which need not fall entirely within the scope of normal duties. An award may be made to an employee who has:

i. Initiated and successfully established new and outstanding methods, practices, plans or designs in such fields as, but not limited to, administration, engineering, law, medicine or environmental sciences;

ii. Achieved honors from professional societies, educational institutions or recognized groups for outstanding performance in his or her field; or

iii. Provided key assistance to the recipient of an award.

4. Community Service Awards may be made to employees who have made outstanding contributions to the communities in which they live or to the State as a whole through organizational activities outside the workplace.

(b) Employee commendation awards may be made to an employee or a group of employees.

(c) A nomination for an employee commendation award may be submitted by an employee or by any other individual to the Committee along with supporting information.

1. Nominations in the heroism category must be submitted within one year of the specified act.

2. Upon receipt, the nomination will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

3. The departmental committee shall make a thorough investigation of the nomination and thereafter, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the nomination shall be returned to the Secretary with an explanation of the reasons for disapproval, along with any supporting documents. If the departmental committee recommendation is for approval, the nomination with recommendations and supporting documentation shall be forwarded to the department's chief executive officer for endorsement. The nomination, with recommendations and supporting documents, shall then be returned to the Secretary.

4. The Committee shall consider the nomination and the departmental committee's recommendation and decide whether or not an award should be made and the type of award. The Secretary shall advise the nominator, in writing, of the action of the Committee. Presentation ceremonies shall be arranged by the Secretary.

4A:6-6.5 Suggestion Award Program standards: State service

(a) A suggestion is a written proposal from an individual or a group of individuals (team) which will produce notable economy or improvement in an operation of State government or one which will improve service to the public, employee safety or employee welfare.

(b) To be considered for a suggestion award, the following requirements must be met:

1. The suggestion must be original, or propose a new application of an old idea;
2. The suggestion must be implemented or ordered implemented by a State agency; and
3. There must be a causal relationship between the suggestion and implementation of the improvement.

(c) The following suggestions are not eligible for an award:

1. A suggestion which represents a part of an employee's duties and which the employee has the authority to change or the responsibility to bring to the attention of his or her supervisor;
2. A suggestion by an employee whose primary duty is research and planning unless the suggestion concerns a matter which is clearly unrelated to the employee's assignment or primary duty;
3. A suggestion which was initially disapproved, unless the idea is implemented as a result of the suggestion within two years from notice of disapproval and is subsequently approved by the Committee;
4. A suggestion which is received by the Committee more than six months (excluding necessary trial period) after it has been placed in use;
5. A suggestion concerning routine maintenance of buildings, equipment or grounds, which should be normally reported. Where sustained complaints have not resulted in correction, the Committee may consider such a suggestion for an award;
6. A suggestion involving new structures, equipment, materials and procedures during the initial period of trial, experiment or development, the length of which is considered reasonable by the Committee;

7. A suggestion which simply involves instituting or raising fees or taxes levied by the State;

8. A suggestion to transfer programs or activities from one level of government to another, unless the transfer of the program or activity effectuates a savings or improvement of services;

9. A suggestion to recoup owed funds from another agency or political subdivision of the state;

10. Any idea or improvement which no State agency is authorized to perform, or which requires legislative or regulatory changes or the enforcement of a law or regulation;

11. A suggestion which involves the use of known technologies or methodologies similar to those already utilized in other areas of the Department or State government; or

12. A suggestion for which staff salary is calculated as savings, without proof that staff is performing a specific work assignment unrelated to the suggestion.

(d) All persons employed in State government at the time of submission are eligible, except members of the Committee or a departmental committee, the Secretary, or the staff of the Awards program.

4A:6-6.6 Suggestion Award Program procedures: State service

(a) Suggestions shall be submitted on a form prescribed by the Committee, which shall include:

1. A brief statement describing the present condition, method or practice, and where it exists.

2. A specific statement of what is suggested and how it can be accomplished. Sketches, charts, samples and additional data may be included.

3. A concise statement of the benefits which will accrue and the name of the organization or organizations which will benefit.

4. The name, home mailing address, social security number, title of present position, salary range, and department and division of the suggester.

(b) Suggestions may be submitted through one of two options at the discretion of the suggester:

1. Option 1 suggestions are suggestions sent to the Committee, which then refers them to the appropriate departmental committee(s).

2. Option 2 suggestions are sent to the Committee to ensure that the suggestion is recorded as the suggester's property. Thereafter, the suggester directly works with supervisory personnel and the departmental committee to develop and refine the suggestion.

(c) The Committee and the departmental committees shall utilize the following procedures in processing suggestions:

1. For Option 1, the departmental committee shall make, within 90 days of receipt of the suggestion from the Committee, an evaluation and a recommendation to the Committee.

2. For Option 2, the departmental committee shall make arrangements with the suggester and appropriate supervisory personnel to develop and refine the suggestion. This departmental committee shall, within a reasonable time, make an evaluation and recommendation to the Committee.

3. The Secretary shall make the initial review of all proposed award recommendations from the departmental committees. When the recommendation from the departmental committee is for disapproval, the Secretary shall, from the evidence presented, determine if the disapproval should be upheld. When the recommendation is for approval and the recommended amount of the award is \$500.00 or less, the Secretary may authorize the award.

4. The Committee shall review evaluations from departmental committees when the recommendation is for approval and the recommended amount of the award is more than \$500.00. Following review, the Committee shall either accept, reject or modify the recommendation.

5. If the Committee determines that it is necessary to use outside consultants in the development or evaluation of a suggestion, the costs may be offset against any award, in coordination with the affected Agency.

6. The Secretary or the Committee, as the case may be, may request further information of the departmental committee, and may return the recommendation to the departmental committee for further deliberations, prior to any formal action taken by the Secretary or Committee concerning the recommendation.

7. The Secretary shall notify the suggester of the disposition of the suggestion within 60 days of receipt of the departmental committee's recommendation, and whether there will be a trial period and the length of such period. See N.J.A.C. 4A:6-6.10 for appeals.

(d) After approval of a suggestion award, the Secretary shall notify the affected agency to issue a check, less appropriate payroll deductions, to be drawn from the agency's operating budget, for the payment of awards within 60 days of notification.

1. Except when the Committee elects to arrange a special ceremony in conjunction with the departmental committee, a confirming letter will be sent to the Secretary that the check was presented.

2. Awards involving vacation options under > N.J.A.C. 4A:6-6.7(a)2 will be arranged by the employee's Personnel Officer on a case by case basis.

4A:6-6.7 Suggestion Award Program types and amounts of awards: State service

(a) Awards for suggestions shall be in cash or additional paid vacation time-off in lieu of cash under certain circumstances.

1. Cash awards shall be no less than \$50.00 nor more than \$10,000 for each approved suggestion.

2. The suggester may select a time-off option of up to two days in lieu of a cash award which shall be based on the daily rate of pay of the suggester.

(b) When a suggestion is adopted primarily because it will result or has resulted in saving money, the amount of the award shall be 10 percent of the net annual savings in the first year of operation, to be paid after the first year of implementation, up to the \$10,000 maximum. The Committee has the authority to waive the one year timeframe, when savings have been verified prior to the end of the first year of implementation, or as deemed appropriate by the Committee. Under exceptional conditions, the Committee may select a typical year or may average several years to determine an award.

(c) When a suggestion is adopted primarily upon the basis of improvements in such areas as safety, health, welfare and morale, or it is otherwise not possible to determine monetary savings, the departmental committee shall provide the necessary documentation, which shall include the recommended amount of the award based on the following factors:

1. Effectiveness of solution offered by suggesters;
2. Seriousness of present problem in terms of money or other factors;
3. Extent of problem;
4. Probability of problem actually happening; and
5. Ingenuity of the solution.

(d) A suggester shall receive the full amount of the award when the suggestion is implemented. Where implementation is not complete but specific steps have been taken, a partial award may be approved at the Committee's discretion. It shall be the responsibility of the departmental committee to inform the Secretary when a suggestion has been placed into operation. Disputes regarding the date of implementation shall be resolved by the Committee.

(e) A cash or other award shall be in addition to the regular compensation of the recipient. The acceptance of such award shall constitute an agreement that the use of the suggestion by the State or its subdivisions or independent authorities shall not form the basis of a further claim of any additional award, compensation or payment by the employee, his or her heirs, or assignees.

(f) Persons who leave State service after having submitted a suggestion are still eligible for an award. In the case of death, the award shall be paid to the suggester's estate.

(g) Departmental awards consisting of plaques may be presented to the department or autonomous agency with the best record of employee participation during the fiscal year for the:

1. Highest number of suggestions approved per one hundred employees.
2. Highest dollar savings to the State realized through implementation of suggestions from their employees.

(h) Special awards consisting of plaques may be presented to suggesters whose accumulated awards total \$10,000 or result in savings to the State of \$100,000. In addition, the suggesters become members of an Advisory Board to the Committee. The Advisory Board may be called upon to comment and make recommendations on policy and program promotion.

(i) State "Suggester of the Year" may be selected by the Committee from among the successful submissions of the previous fiscal year and will be suitably recognized as determined by the Committee. The selection from nominations submitted by the Secretary will be based on:

1. Importance of the suggestion on a State and national level;
2. Savings and/or other benefits;
3. Public relations aspects and compatibility of the selection with the character and goals of the program.

(j) Departmental "Suggester of the Year" may be nominated by each department or autonomous agency. The nomination shall be made by the departmental committee with approval of the chief executive officer. The nomination must be approved by the Committee which will designate a uniform award and arrange for its procurement and presentation. Standards in selecting the nomination will be:

1. The suggestion(s) must have been approved during the previous fiscal year;
2. The suggestion(s) must be of importance or value to the agency;
3. The suggester must be an employee of the agency as of the date nominated.

4A:6-6.8 Service Recognition Program: State service

(a) Recognition for length of service shall be given to all employees upon completion of each five years of employment.

1. Service shall include employment in the career, senior executive or unclassified service in either a regular, provisional, temporary or part-time capacity (part-time service shall be prorated).

2. Years of employment shall be determined in the same manner used to compute annual vacation leave. See N.J.A.C. 4A:6-1.2.

3. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

4. It shall be the responsibility of each agency to determine the employees eligible for length of service recognition.

(b) Retirement awards shall be given at the time of retirement to all those who have retired from any pension system administered by the State, regardless of the amount of service time. Only one retirement award will be presented to any employee.

1. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

2. It shall be the responsibility of each agency to determine the employees eligible for retirement awards.

(c) Each department shall review personnel records prior to the close of the fiscal year to determine employees who will be eligible for length of service and/or retirement recognition. Presentation ceremonies shall be the responsibility of each department and shall be conducted at least on a yearly basis.

(d) Length of service and retirement recognition may consist of letters of commendation, certificates, citations, plaques, medals, gift items, or such other awards as the Committee shall determine.

4A:6-6.9 Departmental awards programs: State service

(a) All State departments and agencies are encouraged to establish and maintain programs for recognition of their own employees for, but not limited to:

1. Attendance;
2. Safety;
3. Productivity;
4. Customer service; and
5. Employee of the year, employee of the month, or similar programs.

(b) Proposals for departmental programs shall be submitted to the Committee, which may approve, disapprove or modify the proposals. Proposals shall describe in detail the categories of awards, eligibility standards, procedures and types and amounts of awards to be given selected employees. Approval shall generally be for a specific duration, after which time the department or agency may seek approval for continuing the programs.

4A:6-6.10 Appeals: State service

(a) Any appeals to the Committee which involve matters under this subchapter, including denial of a suggestion award by a departmental committee, shall be filed with the Secretary.

1. All appeals shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

2. Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

3. The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

4. Except where a hearing is required by law or these rules, or where the Committee finds that a material and controlling dispute of fact exists that can only be resolved by a hearing (See N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures), an appeal will be reviewed on a written record.

5. A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

(b) The Committee may reopen a final decision if new evidence and/or a new argument is presented which, if accepted, would change the outcome. Before reopening is considered, the appellant must satisfy the Committee that it was impossible to present these matters during the original appeal.

(c) If a suggestion is disapproved, and within a two-year period from notice of disapproval appears to have been subsequently implemented, the suggester may appeal the original determination. See N.J.A.C. 4A:6-6.5(c)3.

(d) The Committee shall render the final administrative decision, which shall not be subject to further appeal to the Commissioner or the Merit System Board.

(e) When an agency recommends disapproval of a suggestion award on the basis of absence of causal relationship between the suggestion and implementation, the burden of proof in an appeal shall be on the agency. In all other appeals, the burden of proof shall be on the appellant.

CHAPTER 7. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY

4A:7-1.1 General provisions

(a) There shall be equal employment opportunity for all persons in, or applicants for, the career, unclassified and senior executive services, regardless of race, creed, color, national origin, ancestry, sex, affectional or sexual orientation, age, marital status, domestic partnership status, familial status, religion, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability, except where a particular qualification is specifically permitted and is essential to successful job performance. See N.J.A.C. 4A:4-4.5 on bona fide occupational qualifications.

(b) Equal employment opportunity includes, but is not limited to, recruitment, selection, hiring, training, promotion, transfer, work environment, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures and programs for recruitment, employment, training, promotion, and retention of minorities, women and persons with disabilities. Equal employment opportunity but not affirmative action is required with respect to persons identified solely by their affectional or sexual orientation.

(c) Persons with disabilities shall include any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. See 29 U.S.C. § 706 and > 42 U.S.C. §§ 12101 et seq. Persons with disabilities shall also include persons who are defined as handicapped under > N.J.S.A. 10:5-5(q). See also > N.J.A.C. 4A:4-2.14 for accommodation and waiver of examinations for persons with disabilities.

(d) The following race/ethnic categories shall be used by the Department of Personnel:

1. W: "White, not of Hispanic origin" means persons having origins in any of the original peoples of Europe, North Africa or the Middle East;

2. B: "Black, not of Hispanic origin" means persons having origins in any of the Black racial groups of Africa;

3. H: "Hispanic" means persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

4. I: "American Indian or Alaskan Native" means persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition; and

5. A: "Asian or Pacific Islander" means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

(e) Sexual harassment is a form of unlawful gender discrimination that will not be tolerated.

(f) This chapter prohibits all forms of unlawful discriminatory conduct, including sexual harassment, against any State employee by any other State employee or person doing business with the State. In addition, this chapter prohibits sexual harassment or any other form of unlawful discriminatory conduct by a State employee against a person doing business with the State. A "person doing business with the State" means an

independent vendor performing services or supplying goods pursuant to a contract with the State.

(g) In local service, an appointing authority may establish policies and procedures for processing discrimination complaints.

4A:7-1.2 Discriminatory inquiries

(a) A preemployment application shall not require an applicant to provide information covering subject matters which may be discriminatory, except where related to a job requirement or required by law. See Division on Civil Rights rules at > N.J.A.C. 13:7-1.1.

(b) Preemployment and employment information which is required by the State or Federal government for statistical purposes may be obtained by an appointing authority or the Department of Personnel.

4A:7-1.3 (Reserved)

4A:7-2.1 Division responsibilities: State service

(a) The Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, senior executive and unclassified services. Such program shall:

1. Ensure that each State agency's equal employment opportunity and affirmative action goals for minorities and women are in accordance with their availability (for recruitment, transfer, or promotion). Availability is defined as the percentage of minorities and women in the agency or the relevant recruitment area who have the requisite skills for appointment in a specific job category or group, or who are capable of acquiring such skills;

2. Ensure that each State agency undertakes good faith efforts to make employment opportunities available to persons with disabilities at all levels within the agency's organization;

3. Monitor each State agency to ensure compliance with all laws and rules relating to equal employment opportunity and affirmative action and to determine that the purposes of this subchapter are implemented through the agency's Equal Employment Opportunity/Affirmative Action Officers;

4. Seek correction of discriminatory policies, practices and procedures;
5. Recommend appropriate sanctions for non-compliance to the Commissioner;
6. Review State personnel policies, practices and procedures, and where appropriate, eliminate artificial barriers to equal employment opportunity;
7. Act as liaison with Federal, State and local enforcement agencies;
8. Ensure that minorities, women and persons with disabilities are among the pool of applicants for all vacant positions in the career, unclassified and senior executive services;
9. Review its rules, selection devices and testing procedures in order to amend or eliminate those which are discriminatory;
10. Analyze job specifications to eliminate artificial barriers to employment;
11. Review all certification dispositions for compliance with this chapter;
12. Review all discrimination complaints under Title VII of the Civil Rights Act of 1964 and the New Jersey Law Against Discrimination, evaluate trends and recommend appropriate policy changes;
13. Transmit to the Governor, at least semi-annually, progress reports on affirmative action in all State agencies; and
14. Perform such other duties as prescribed by law and these rules.

4A:7-2.2 Equal Employment Opportunity Advisory Commission: State service

(a) An Equal Employment Opportunity Advisory Commission shall be established and shall consist of 11 members appointed by the Governor, at least six of whom shall be minorities, women and persons with disabilities, and shall meet at least quarterly.

(b) The Commission shall advise the Division of EEO/AA and make recommendations on improving the State affirmative action plan.

4A:7-2.3 Appointing authority responsibilities

(a) In local service, an appointing authority may establish equal employment opportunity and affirmative action programs. Upon request, the Division of EEO/AA shall advise and assist local appointing authorities in the development of such programs.

(b) Each State agency shall:

1. Ensure equality of opportunity for all of its employees and applicants seeking employment;

2. Appoint at least one person as the Equal Employment Opportunity/Affirmative Action Officer who shall report to the agency head or a designee within the office of the agency head, and who shall serve on a full-time basis, unless otherwise requested by the agency head and approved by the Commissioner of the Department of Personnel and Director of the Division of EEO/AA;

3. Submit an affirmative action plan to the Director for approval, which shall include, but not be limited to, a policy statement, organization of the agency, a description of how the plan is communicated to its employees, an analysis of the workforce and job categories, goals and timetables and specific recruitment/training programs to meet its goals;

4. Submit to the Director quarterly affirmative action reports and an annual update of its affirmative action plan which shall include an evaluation of the goals set for the prior year, the goals for the upcoming year and the number, subject matter, time for processing and disposition of all discrimination complaints filed with the agency;

5. Make a good faith effort to meet the affirmative action goals and timetables set forth in its affirmative action plan and updates. Any agency which fails either to achieve or make a good faith effort to achieve its goals may be subject to sanctions and penalties;

6. Ensure that minorities, women and persons with disabilities are considered for employment opportunities where the need for aggressive efforts have been identified;

7. Explore and, where appropriate, implement innovative personnel policies to enhance equal employment opportunity and affirmative action; and

8. Adopt and implement the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments in the Workplace, > N.J.A.C. 4A:7-3.2.

4A:7-3.1 Policy prohibiting discrimination, harassment or hostile environments in the workplace

(a) The State of New Jersey is committed to providing every State employee with a workplace free from unlawful discrimination. All forms of unlawful employment discrimination based upon race, creed, color, national origin, ancestry, age, sex, marital status, domestic partnership status, familial status, religion, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability are prohibited and will not be tolerated. Sexual harassment is a form of unlawful gender discrimination and, likewise, will not be tolerated.

1. Unlawful discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. This policy applies to all employees and applicants for employment in State departments, commissions, State colleges, and authorities. The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or non-employees. This policy applies to conduct which occurs in the workplace and also extends to conduct which occurs at any location that can be reasonably regarded as an extension of the workplace, such as any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed.

2. This policy also applies to third party harassment. Third party harassment is unwelcome behavior of a sexual, racial or derogatory nature regarding any protected category, that is not directed at an individual but is a part of that individual's work environment. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

3. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, compensation, fringe benefits, working conditions and career development.

(b) Racial, gender, national origin or ancestry, age, religious, disability, affectional or sexual orientation, marital status, familial status, domestic partnership status, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States discrimination or harassment is prohibited.

1. It is a violation of this policy to engage in any employment practice or procedure which treats an employee less favorably based upon a person's race, gender, national origin or ancestry, religion, age, disability, affectional or sexual orientation, marital status, domestic partnership status, familial status, atypical hereditary cellular or blood trait, genetic information, or liability for service in the Armed Forces of the United States.

2. It is also a violation of this policy to use derogatory or demeaning slurs to refer to a person's race, gender, age, religion, disability, affectional or sexual orientation, or ethnic background which have the effect of harassing an employee or creating a hostile work environment. Harassment or the creation of a hostile work environment can occur even if there was no intent on the part of an individual to harass or demean another.

3. Examples of behaviors that may constitute prohibited workplace discrimination or harassment include, but are not limited to:

i. Discriminating against an individual with regard to terms and conditions of employment because of that individual's race, gender, age, religion, disability, affectional or sexual orientation, place of origin, or his or her ancestors' place of origin;

ii. Treating an individual differently because of race, gender, age, religion, disability, affectional or sexual orientation, place of origin, or his or her ancestors' place of origin, or because an individual has the physical, cultural or linguistic characteristics of a racial or national origin group;

iii. Treating an individual differently because of marriage to, domestic partnership with, or association with persons of a racial, religious or national origin group; or due to membership in or association with an organization identified with the interests of a racial, religious or national origin group; or because an individual's name, domestic partner's name, or spouse's name is associated with a racial, religious or national origin group;

iv. Calling another by an unwanted nickname which refers to one or more of the above characteristic, or telling ethnic jokes which harass an employee or create a hostile work environment;

v. Using derogatory references regarding any of the above characteristics in any job-related communication;

vi. Engaging in threatening, intimidating, or hostile acts, in the workplace, based on the foregoing classifications; or

vii. Displaying or distributing material in the workplace that contains language or images that are derogatory or demeaning, based upon any of the foregoing classifications.

(c) It is a violation of this policy to engage in sexual harassment of any kind.

1. For the purposes of this policy, sexual harassment, with or without sexual conduct, is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Sexual harassment generally falls into two categories: quid pro quo and hostile work environment harassment:

i. Quid pro quo sexual harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct based on the gender of the affected employee when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions.

ii. It shall be a violation of this policy for any person to use his or her authority to make any sexual advance toward an individual over whom the person is authorized to make, recommend or otherwise to influence personnel actions; to grant, recommend, or refuse to take personnel action on the basis of an employee's gender or sexual orientation or in exchange for sexual favors; or to take or fail to take a personnel action as reprisal against any employee for rejecting or reporting a sexual advance. Sexual advances or requests for sexual favors can be in the form of either expressed or implied comments, writings, or actions.

3. Hostile work environment sexual harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Gender-based harassment may give rise to a claim of a hostile environment whether or not sexual activity or language is involved, if it has the purpose or effect of abusing, devaluing or subordinating the members of one sex and it adversely affects an individual's employment opportunities.

4. Third party sexual harassment is unwelcome behavior of a sexual nature or based on sex that is not directed at an individual but is a part of an individual's work environment.

5. Examples of prohibited behaviors that may constitute sexual harassment include, but are not limited to:

i. Generalized gender-based remarks and comments;

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;

iii. Verbal or written sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, invitations, gestures or inappropriate comments about a person's clothing;

iv. Visual contact, such as leering or staring at another's body, gesturing, displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals;

v. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;

vi. Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation or promotional opportunity; or

vii. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, including sexual harassment, or who witnesses others being subjected to such harassment or discrimination is encouraged to promptly report the incident(s) to either their supervisor or manager or directly to their respective department, commission, State college or authority's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by their department head to receive workplace discrimination complaints. All employees are expected to cooperate with investigations undertaken pursuant to (f) below. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination.

(e) Supervisors should make every effort to maintain a work environment that is free from any form of prohibited discrimination/ harassment. Supervisors are expected to take all allegations of discrimination/harassment, including sexual harassment, seriously, and to immediately refer the matter to the individual(s) responsible for receiving such complaints. Those individuals should include persons referenced in their department's, commission's, State college's, or authority's procedures for reporting workplace discrimination. All complaints will be reviewed and prompt and appropriate remedial action will be taken to address any substantiated claim. All supervisors receiving complaints of unlawful discrimination/harassment must immediately advise the department, commission, State college or authority's Equal Employment Opportunity/Affirmative Action Officer of the complaint.

(f) Each department, commission, State college or authority shall have in place procedures for reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. Each department, commission, State college or authority is responsible for designating an individual or individual(s) to receive complaints of discrimination/harassment, including sexual harassment, investigate such complaints, and recommend appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each department, commission, State college or authority should have alternate persons designated to receive claims of discrimination/harassment.

1. All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the respective agency head to make a final decision as to whether a violation of the policy has been substantiated.

2. Where discrimination/harassment is found to have occurred, the agency shall take prompt and appropriate remedial action to stop the discrimination/harassment and deter its reoccurrence.

3. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

4. Each department, commission, State college or authority shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

(g) Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, or against any employee who provides information in the course of an investigation into claims of unlawful discrimination/harassment in the workplace is prohibited by this policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall not be subjected to adverse employment consequences based upon such involvement or be the subject of retaliation.

(h) If any employee knowingly makes a false accusation of unlawful discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(i) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to

discuss the claims with the alleged harasser and other persons who may have relevant knowledge. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter. All persons interviewed shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in disciplinary action.

(j) Any employee found to have violated this policy may be subject to appropriate disciplinary action which may include: reprimand, suspension, reassignment, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

(k) All State departments, commissions, State colleges, and authorities should make efforts to provide employees with information regarding the prevention of unlawful discrimination/ harassment and the complaint procedure to be followed in filing complaints when unlawful harassment/discrimination has occurred. All State departments, commissions, State colleges and authorities should make efforts to provide supervisors and managers with training that will inform them of the appropriate steps to be taken to address complaints of unlawful discrimination/harassment.

4A:7-3.2 Model procedures for internal complaints alleging discrimination, harassment or hostile environments in the workplace

Each State department, commission, State college, and authority is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the Department of Personnel.

"(a) All employees have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, > N.J.A.C 4A:7-3.1.

(b) Employees can report incidents of discrimination to either (name of Officer), the EEO/AA Officer, or to any supervisory employee in the (Appointing Authority). Employees may also report such incidents to (Authorized Designee).

(c) Employees should make every effort to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued unlawful conduct.

(d) Supervisory employees should immediately report all alleged violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, whether reported by an employee or observed directly, to (Name of Officer), EEO/AA Officer.

(e) If reporting a complaint to any of the persons set forth above presents a conflict of interest, the complaint may be filed directly with the Department of Personnel, Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) While not mandatory, in order to facilitate a prompt, thorough and impartial investigation, all complainants should fill out a Discrimination Complaint Processing Form (DPF-481).

(g) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the workplace discrimination, harassment or hostile environment complaint, and determine if intermediate protective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace.

(h) At the EEO/AA Officer's direction, when necessary, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(i) An investigatory report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include:

(a) a summary of the complaint;

(b) summary of the facts developed through the investigation; and

(c) an analysis of the allegations and the facts. The investigatory report will be submitted to (Appointing Authority Head) who will issue a final determination.

(j) The (Appointing Authority Head) will review the investigatory report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace has been substantiated. If a violation has occurred, the (Appointing Authority Head) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(k) The (Appointing Authority Head) will issue a final letter of determination to all parties, containing the results of the investigation and setting forth the complainant's right of appeal to the Merit System Board. The Division of EEO/AA, Department of Personnel shall be furnished with a copy of the final letter of determination.

1. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (g) above is completed.

2. The time for completion of the investigation and issuance of the final letter of determination may be extended by the appointing authority head for up to 60 additional days in cases involving exceptional circumstances. The appointing authority head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(l) If the complainant disagrees with the determination of the (Appointing Authority), he or she may submit a written appeal, within twenty days of the receipt of the letter of determination from the (Appointing Authority), to the Merit System Board, PO Box 312, Trenton, NJ 08625. The appeal should contain a concise explanation of the disagreement. Regulations governing the appeal process are set forth at > N.J.A.C. 4A:7-3.3.

(m) To the extent practicable and appropriate under the circumstances, confidentiality will be maintained throughout all phases of the intake, investigation and remediation process. Any breach of confidentiality by any party involved in this procedure may be considered an act of obstruction, and may subject that employee to disciplinary action.

(n) Any employee can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. You should contact the specific agency to obtain exact time frames. The deadlines run from the last date of unlawful harassment or discrimination, not from the date that the internal workplace discrimination/harassment complaint to the employer is resolved.

1. Employees may file complaints with the following agencies:

i. Division on Civil Rights

N.J. Department of Law & Public Safety

180 days for violation of State law

ii. US Equal Employment Opportunity Commission (EEOC) 300 days."

4A:7-3.3 Department of Personnel proceedings: State service

(a) A complainant in the State career, senior executive and unclassified service, or who is an applicant for employment, may appeal a final decision of the department head to the Merit System Board within 20 days of receipt of the final letter of determination.

(b) The employee(s) against whom the complaint is made may appeal the decision to the Merit System Board within 20 days of receipt of the determination that a violation of the policy has been substantiated. However, if disciplinary action is recommended therein, the procedures for the appeal of disciplinary action shall be followed.

(c) Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commissioner may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in > N.J.A.C. 4A:7-3.2 or a combination of procedures as the Commissioner deems appropriate. See N.J.A.C. 4A:2-1.7.

(d) The appeal from the final letter of determination, to the Merit System Board shall be in writing and include all materials presented by the complainant at the department level and the final letter of determination from the department head.

(e) The Merit System Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

(f) The appellant shall have the burden of proof in all discrimination appeals brought before the Merit System Board.

(g) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Merit System Board of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

4A:7-3.4 (Reserved)

CHAPTER 8. LAYOFFS

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency or other related reasons.

1. Demotions for economy, efficiency or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) The Commissioner or authorized representative of the Department of Personnel shall determine seniority (see > N.J.A.C. 4A:8-2.4), and shall designate lateral,

demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

4A:8-1.2 Alternatives to layoff

(a) In State service, appointing authorities shall lessen the possibility of layoffs by offering and implementing, as appropriate, voluntary alternatives.

(b) In local service, appointing authorities should lessen the possibility of layoffs by considering voluntary alternatives.

(c) Alternatives to layoff may include, but are not limited to:

1. Granting of leaves of absence without pay to permanent employees, without loss of seniority for purposes of this Title, subject to the approval of the Department of Personnel;

2. Granting voluntary furloughs to employees (see > N.J.A.C. 4A:6-1.23);

3. Allowing voluntary reduction of work hours by employees, which may include job sharing arrangements;

4. Providing employees with optional temporary demotional title changes; and

5. Other appropriate actions to avoid a layoff.

(d) Employee participation in alternatives is voluntary. Should a layoff occur despite alternative measures, employee layoff rights shall not be diminished by their participation in any such alternative measure; that is, the employee will be considered to have been serving in the original title and earning seniority in that title.

(e) Appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff.

(f) Appointing authorities shall submit a plan for alternatives to layoff and obtain approval from the Department of Personnel prior to implementation. The plan shall include time periods for all alternatives, a statement of the employees' right to be restored to prior status should a layoff occur during such time periods, and summaries of employee status and salary at the conclusion of time periods.

4A:8-1.3 Pre-layoff actions

(a) Appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions which may include, but are not limited to:

1. Initiating a temporary hiring and/or promotion freeze;
2. Separating non-permanent employees;
3. Returning provisional employees to their permanent titles;
4. Reassigning employees; and
5. Assisting potentially affected employees in securing transfers or other employment.

(b) The appointing authority shall to the extent possible lessen the impact of any layoff action on permanent employees by first placing employees without permanent status, and then those with the least seniority, in positions being vacated, reclassified or abolished.

(c) Appointing authorities shall consult with affected negotiations representatives prior to initiating measures under this section.

(d) Upon request by an appointing authority, assistance may be provided by the Department of Personnel in implementing pre-layoff measures.

4A:8-1.4 Review by Department of Personnel

(a) At least 30 days prior to issuance of layoff notices, or such other period as permitted by the Department of Personnel, the following information shall be submitted by an appointing authority to the Department of Personnel:

1. The reason for the layoff;
2. The projected effective date of layoff;
3. Sample copies of the layoff notice and the projected date for issuance;
4. The number of positions (including position numbers in State service) by title to be vacated, reclassified, or abolished and the names, status, layoff units, locations and, as of the effective date of the layoff, permanent titles of employees initially affected, including employees on leave;
5. The vacant positions in the layoff unit (including position numbers in State service) that the appointing authority is willing to fill as of the effective date of the layoff;

6. A detailed explanation of all alternative and pre-layoff actions that have been taken, or have been considered and determined inapplicable;

7. A summary of consultations with affected negotiations representatives; and

8. A list of affected negotiations representatives, including addresses and the units they represent.

(b) In local jurisdictions having a performance evaluation program approved by the Department of Personnel, the appointing authority shall also submit the names of permanent employees who have received a rating below Commendable or equivalent in their permanent title within the 12-month period preceding the effective date of the layoff.

(c) Following submission of the information required in (a) above, all vacant positions identified in (a) 5 above shall be filled, except under exceptional circumstances with the approval of the Commissioner, and may only be filled through layoff procedures.

(d) Upon review of the information required to be submitted in (a) and (b) above, or in the absence of timely submission of such information, the Commissioner may take appropriate remedial action, including:

1. Requiring submission of additional or corrected information;

2. Providing needed assistance to the appointing authority;

3. Directing implementation of appropriate alternative or pre-layoff measures; or

4. Directing necessary changes in the layoff notice, which may include the effective date of the layoff.

(e) Upon approval of the layoff plan, the Department of Personnel shall provide affected negotiations representatives with a copy of the plan as it affects their represented employees.

4A:8-1.5 Layoff units and job locations

(a) In State service, the layoff unit shall be a department or autonomous agency and include all programs administered by that department or agency. An autonomous agency is one which is in, but not under the supervision of, a principal department.

(b) In local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency (see > N.J.A.C. 4A:8-2.1(c)1i), or an entire school district. However, prior to the time set by > N.J.A.C. 4A:8-1.4 for submission of information to the Department of Personnel, a different layoff unit consisting of one or more departments may be approved by the Commissioner under the following procedures:

1. A request may be submitted by an appointing authority to the Commissioner or the matter may be initiated by the Commissioner.

2. Notice of the request shall be provided by the appointing authority to affected negotiations representatives upon submission to the Commissioner.

3. After receipt of the request, the Commissioner shall specify a period of time, which in no event shall be less than 20 days, during which affected employees and negotiations representatives may submit written comment and recommendations.

4. Thereafter, the Commissioner shall issue a determination approving, modifying or rejecting the proposed layoff unit, after considering:

- i. The need for a unit larger than a department;
- ii. The functional and organizational structure of the local jurisdiction;
- iii. The number of employees, funding source and job titles in the proposed unit;
- iv. The effect upon employee layoff rights; and
- v. The impact upon service to departmental clientele and the public.

(c) In State service, the Commissioner of Personnel shall determine job locations within each department or autonomous agency.

1. Each job location shall consist of a county.

2. The Commissioner of Personnel shall assign a job location to every facility and office within a department or autonomous agency.

3. See > N.J.A.C. 4A:8-2.2 for exercise of lateral and demotional rights within job locations. See > N.J.A.C. 4A:8-2.3 for exercise of special reemployment rights within job locations.

(d) In local service, the entire political subdivision is the job location and includes any facility operated by the political subdivision outside its geographic borders.

4A:8-1.6 Layoff notice

(a) No permanent employee or employee serving in a working test period shall be separated or demoted as a result of a layoff action without having been served by the appointing authority, at least 45 days prior to the action, with a written notice personally, unless the employee is on a leave of absence or otherwise unavailable, in which case by certified mail. If service is by certified mail, the 45 days shall be counted from the first date of notice by the United States Postal Service to addressee. A notice shall also be conspicuously posted in all affected facilities of the layoff unit. A copy of the notice serviced on employees shall be provided to the Department of Personnel and affected negotiations representatives.

1. In State service, the Commissioner may order a greater period of time for written notice to employees.

(b) The notice shall contain the following:

1. The effective date of the layoff action; and
2. The reason for the layoff.

(c) The appointing authority shall be responsible for keeping records of those employees receiving the layoff notice.

(d) A layoff shall not take place more than 120 days after service of the notice unless an extension of time is granted by the Commissioner for good cause. If a layoff has not taken place within 120 days of service of the notice, and no extension has been granted, new notices must be served at least 45 days prior to the effective date of the layoff.

(e) Layoff rights and related seniority determinations (see N.J.A.C. 4A:8-2) shall be based upon the scheduled effective date of a layoff. These determinations shall remain applicable even if the effective date of the layoff is extended. However, when the scheduled effective date is extended, the appointing authority shall notify the Department of Personnel of employees who successfully complete their working test periods prior to displacement. The Department of Personnel shall then redetermine only the special reemployment rights to reflect the newly attained permanent status.

(f) Following determination of layoff rights by the Department of Personnel, permanent and probationary employees affected by a layoff action shall be served with a final written notice of their status, including a statement of appeal rights.

1. Employees notified of their separation from service due to layoff shall be informed of vacancies in other State departments or agencies, to which an employee, if qualified and if rated Commendable or above in the most recent final PAR rating, shall have a right to accept an appointment in lieu of separation. Should an employee accept an

appointment to such a vacancy in lieu of separation, the employee shall forfeit any special reemployment rights that he or she would have had.

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to exercise displacement rights as set forth in > N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to exercise displacement rights as set forth in > N.J.A.C. 4A:8-2.2 against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c) A special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by the Department of Personnel in the same manner as lateral and demotional rights.

1. A special reemployment list from one governmental jurisdiction shall not be certified to another jurisdiction.

i. In local service, for purposes of this chapter, an autonomous agency shall be considered a separate jurisdiction. An autonomous agency is one which, by statute, is a body corporate and has the powers of an appointing authority.

ii. In State service, the entire State government constitutes a single jurisdiction.

(d) Employees serving in a specialized credential variant title shall have title rights based upon the special credentialing, provided that the employees are serving in a specialized credential variant title on or before submission of the layoff plan, see > N.J.A.C. 4A:8-1.4. Specialized credentialing shall be based upon at least one of the following, upon approval by the Department of Personnel:

1. Licensure or certification;

2. Specialized education;

3. Specialized client-based or program experience; or

4. Service as a trainee in a specialized area of operation leading to advancement to a primary title with specialized credentialing.

(e) Affected negotiations representatives shall be given reasonable notice and permitted to be present at any meeting with individual employees where layoff rights are discussed.

(f) See > N.J.A.C. 4A:8-2.2 for the exercise of lateral and demotional title rights, and see > N.J.A.C. 4A:8-2.3 for the exercise of special reemployment rights.

4A:8-2.2 Exercise of lateral and demotional rights

(a) Employees shall be ranked, for purposes of exercise of layoff rights, in order of seniority.

(b) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and

then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the department or autonomous agency and indicate:

1. Job locations at which he or she will accept lateral title rights; and
2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(c) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(d) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;
2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;
3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be based on the level of the permanent title held and seniority;
4. The position held by the employee serving in a working test period with the least seniority;
5. In State service, and in local jurisdictions having a performance evaluation program approved by the Department of Personnel, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Unsatisfactory or equivalent rating;
6. The position held by the permanent employee with the least seniority (see > N.J.A.C. 4A:8-2.4).

(e) Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (d)1 through 4 above.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series from which they were laid off.

(h) When employees are granted demotional title rights, the employees shall be entitled to exercise these rights regardless of whether they have greater or less seniority than the employees against whom they are exercising such rights.

4A:8-2.3 Exercise of special reemployment rights

(a) A permanent employee shall be granted special reemployment rights based on the permanent title from which or he she has been laid off, demoted or displaced by job location. In addition, the employee shall be entitled to special reemployment rights to his or her previously held lateral or demotional title (see > N.J.A.C. 4A:8-2.2(f)). These rights are subject to the following limitations:

1. In State service, an employee who is displaced from the municipality in which his or her facility or office was located shall, at the employee's option, be granted special reemployment rights to that municipality in addition to job locations selected by the employee.

2. An employee who is displaced by job location in a layoff action, but remains in his or her permanent title, or is reappointed to his or her permanent title from a special reemployment list, shall have special reemployment rights only to his or her original job location at the time of layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

3. An employee who exercises a lateral title right or who is reappointed to a lateral title from a special reemployment list shall retain special reemployment rights only to his or her original permanent title and job location at the time of the layoff. In cases where no facility or office remains in the original job location, the employee shall be provided the choice of another job location. As permitted by the Department of Personnel for other good cause, and upon written request by the employee with notice to the appointing authority, the employee may substitute another job location for the original job location.

(b) Priority of special reemployment lists shall be determined as follows:

1. Special reemployment lists shall take priority over all other reemployment lists, open competitive lists and lateral title changes pending examination (see > N.J.A.C. 4A:4-7.6(c)), except those resulting from position reclassifications, for the entire jurisdiction (see > N.J.A.C. 4A:8-2.1(c)1). Special reemployment lists shall also take priority over promotional lists for the State department, autonomous agency or local department where the layoff occurred.

2. Special reemployment lists shall also take priority over noncompetitive appointments, transfers except appointments pursuant to > N.J.A.C. 4A:8-1.6(f)1, and all lateral title changes except those resulting from position reclassification within a layoff unit.

(c) Employees shall be placed on a special reemployment list for an unlimited duration.

1. Ranking on the list shall be based on the employee's permanent title and seniority at the time of layoff, based on the method for calculating seniority in effect at the time of certification of the list.

2. An employee who accepts an appointment to a position in another department or agency in lieu of separation at the time of layoff shall not be placed on a special reemployment list. See > N.J.A.C. 4A:8-1.6(f)1.

3. Appointments from the list shall be made in the order certified. Removal of names from a special reemployment list may be made in accordance with applicable rules (see > N.J.A.C. 4A:4-4.7 and 4A:4-6). Following appointment from a special reemployment list, an employee's name shall be removed from the special reemployment list for any title with the same or lower class code (State service) or lower level (local service), except that the employee shall retain rights to his or her permanent job title and job location at the time of layoff.

(d) Employees who resign or retire in lieu of lateral displacement, demotion or layoff, or who subsequently resign or retire, will not be placed or remain on a special reemployment list (see > N.J.A.C. 4A:4-3.1(a)3).

(e) In State service, employees who decline reemployment to a job location will be removed from future certifications to that location for that title and all previously held lateral or lower titles. Employees who decline reemployment to their original or substituted job location (other than the original municipality) will be certified only to the original municipality for that title and all lateral or lower titles. Employees who decline reemployment to their original municipality shall be removed from the special reemployment list for that title and all lateral or lower titles.

1. However, employees who are unavailable for work when offered reemployment due to temporary disability or other good cause shall remain on the special

reemployment list. Employees who decline reemployment because the position is in a different shift from the position from which they were displaced, or because the position is full time when the position from which displaced was part-time (or vice versa) shall remain on the special reemployment list.

(f) The name of an employee shall be removed from all applicable special reemployment lists where the employee receives an intergovernmental transfer in accordance with > N.J.A.C. 4A:4-7.1A within 90 days of the effective date of a layoff resulting in the employee's separation from service.

4A:8-2.4 Seniority

(a) Seniority for purposes of this chapter, except for police and fire titles as set forth in (b) below, is the amount of continuous permanent service in the jurisdiction, regardless of title. An employee's continuous permanent service accumulated prior to an intergovernmental transfer effected in accordance with > N.J.A.C. 4A:4-7.1A shall be considered as continuous permanent service in the jurisdiction. Seniority shall be based on total calendar years, months and days in continuous permanent service regardless of work week, work year or part-time status.

1. A resignation/new appointment pursuant to > N.J.A.C. 4A:4-7.9 shall not be considered a break in continuous service.

(b) For police and fire titles in State and local service, seniority for purposes of this chapter is the amount of continuous permanent service in an employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title. Seniority shall be based on total calendar years, months and days in title regardless of work week, work year or part-time status.

1. A police title is any law enforcement rank or title where entry level employees are required by > N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course.

2. A fire title is any uniform fire department rank or title.

3. If two or more employees in a police or fire title have equal seniority, the tie shall be broken in the order of priority set forth in (h) below, except that the fifth tie-breaking factor shall give priority to the employee with greater continuous permanent service, regardless of title.

4. A county or municipal appointing authority may elect to provide, through adoption of an ordinance or resolution, as appropriate, that employees in police and fire titles may exercise previously held demotional rights, pursuant to > N.J.A.C. 4A:8-2.2 (f) against employees in any layoff unit in the jurisdiction. Such ordinance or resolution shall

not be given effect during a layoff unless adopted at least 90 days prior to submission of the layoff plan (see > N.J.A.C. 4A:8-1.4).

(c) Preferred status, which means a higher ranking for layoff rights purposes than anyone currently serving in a demotional title, shall be provided as follows:

1. Employees with permanent status who exercise their demotional rights in a layoff action, other than to a previously held title pursuant to > N.J.A.C. 4A:8-2.2 (f), will have preferred status.

2. Employees reappointed from a special reemployment list to a lower title in the same layoff unit from which they were laid off or demoted will have preferred status. Records of preferred status shall be maintained by the appointing authority in a manner acceptable to the Department of Personnel.

3. If more than one employee has preferred status, priority will be determined on the basis of the class code in State service, or the class level in local service, of the permanent title from which each employee was laid off or demoted and the seniority held in the higher title.

(d) The following shall not be deducted from seniority calculations:

1. Voluntary furloughs;

2. All leaves with pay including sick leave injury (SLI);

3. Leaves without pay for the following purposes: military, educational, gubernatorial appointment, unclassified appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff;

4. In State service, employment in the Senior Executive Service, provided the employee had permanent service prior to the SES appointment; and

5. In local service, leave to fill elective public office.

(e) Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority. In State service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after March 1, 1987. In local service, deductions will be made only for such suspensions, leaves of absence and periods of layoff which began on or after July 1, 1988.

(f) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes; however, the elapsed time between the layoff and reappointment shall be deducted from the employee's seniority.

(g) Employees serving in their working test period shall be granted seniority based on the length of service following regular appointment. Permanent employees serving in a working test period in another title shall also continue to accrue seniority in their permanent titles. Permanent employees serving in a provisional, temporary or interim appointment shall continue to accrue seniority in their permanent titles.

(h) If two or more employees have equal seniority, the tie shall be broken in the following order of priority (tie-breakers based on service shall include service accumulated prior to an intergovernmental transfer effected in accordance with > N.J.A.C. 4A:4-7.1A, except in the case of an intergovernmental transfer of a police officer or a firefighter):

1. A disabled veteran shall have priority over a veteran. A veteran shall have priority over a non-veteran (see N.J.A.C. 4A:5-1);

2. The employee with the higher performance rating shall have priority over an employee with a lower rating, provided that all tied employees were rated by the same supervisor. In local service, the performance rating system must have been approved by the Department of Personnel;

3. The employee with the greater amount of continuous permanent service in the employee's current permanent title and other titles that have (or would have had) lateral or demotional rights to the current permanent title, shall have priority. An employee appointed to a previously held title pursuant to > N.J.A.C. 4A:8-2.2 (f) shall have all permanent continuous service in that title aggregated for seniority purposes;

4. The employee with the greater seniority in the title before a break in service shall have priority;

5. The employee with greater non-continuous permanent service, regardless of title, shall have priority;

6. The employee who ranked higher on the same eligible list for the title shall have priority;

7. The employee with greater continuous service as a provisional, temporary or interim appointee in the subject title shall have priority;

8. The employee with greater total service, regardless of title or status, shall have priority;

9. The employee with the higher performance rating during the 12 month period prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

10. The employee with the higher performance rating during the period between 24 months and 12 months prior to the effective date of the layoff shall have priority over an employee with a lower rating. In local service, the performance rating system must have been approved by the Department of Personnel;

11. Other factors as may be determined by the Commissioner.

4A:8-2.5 Reassignments

(a) For a period of 12 months after the service of the layoff notice required by > N.J.A.C. 4A:8-1.6(a), no permanent or probationary employee in the layoff unit in a title actually affected by layoff procedures shall be subject to the following types of involuntary reassignments, except as permitted by the Commissioner for good cause:

1. Reassignment to a different shift, unless the reassignment is based on a seniority program;

2. In State service, if employed in the original municipality, reassignment to a different municipality; and

3. In State service, if not employed in the original municipality, reassignment to a different job location.

(b) Specific justification for such involuntary reassignments must be shown by the appointing authority.

(c) During the period described in (a) above, notice of the types of voluntary reassignments listed in (a) above shall be provided to affected negotiations representatives, and appointing authorities should consult with such representatives upon request. Appointing authorities shall conspicuously post notices of opportunities for voluntary reassignment for a period of 10 working days at all work locations.

4A:8-2.6 Appeals

(a) Permanent employees and employees in their working test period may file the following types of appeals:

1. Good faith appeals, based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. Such appeals shall be subject to hearing and final administrative determination by the Merit System Board (see > N.J.A.C. 4A:2-2.9 et seq.); and/or

2. Determination of rights appeals, based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record by the Department of Personnel, with a right to further appeal to the Commissioner (see > N.J.A.C. 4A:2-1.1(d)).

(b) Good faith and determination of rights appeals shall be filed within 20 days of receipt of the final notice of status required by > N.J.A.C. 4A:8-1.6(f). Appeals must specify what determination is being appealed, the reason(s) for the appeal, and the relief requested.

(c) The burden of proof is on the appellant.

CHAPTER 9. POLITICAL SUBDIVISIONS

4A:9-1.1 Jurisdictions adopting Title 11A, New Jersey Statutes by referendum

(a) Upon the adoption by referendum of Title 11A, New Jersey Statutes, by a political subdivision, the Commissioner shall provide for the classification of all positions in the jurisdiction. See N.J.S.A. 11A:9-2 through > 11A:9-7 for referendum procedures.

(b) Any employee who holds a position allocated to the career service and who has been continuously employed by the political subdivision for a period of at least one year prior to the adoption of Title 11A, New Jersey Statutes, including any such employee on an approved leave of absence, shall be considered a permanent employee under Title 11A, New Jersey Statutes and these rules as of the date of adoption.

(c) Seniority calculations for employees determined to be permanent under (b) above shall be based upon the length of their continuous service with that political subdivision.

(d) Vacation and sick leave entitlements under Title 11A, New Jersey Statutes, for employees determined to be permanent under (b) above shall be based upon seniority and are effective on a date set by the appointing authority. However, the date shall in no event be more than 60 days following the adoption of Title 11A, New Jersey Statutes.

4A:9-1.2 Jurisdictions subject to Title 11A, New Jersey Statutes, by consolidation or legislation

(a) This rule applies to political subdivisions which are subject to Title 11A, New Jersey Statutes through consolidation of governmental functions or by legislation.

(b) When functions of two or more political subdivisions are consolidated, and any one of the political subdivisions shall be operating under Title 11A, New Jersey Statutes, at the time of such consolidation, the other political subdivision or subdivisions

shall be deemed to have adopted Title 11A, New Jersey Statutes with regard to the combined functions.

(c) The Commissioner shall provide for classification of all positions in the jurisdictions following such consolidation or enactment of legislation.

(d) Any employee who has been employed by the new jurisdiction, holds a position allocated to the career service and has been continuously employed by the former jurisdiction for a period of at least one year prior to the effective date of such consolidation or legislation, including any such employee on an approved leave of absence, shall be considered a permanent employee under Title 11A, New Jersey Statutes and these rules as of that date, except as may be provided in such legislation.

(e) Seniority calculations for employees determined to be permanent under (d) above shall be based upon the length of their continuous service with the political subdivision.

(f) Vacation and sick leave entitlements under Title 11A, New Jersey Statutes, for employees determined to be permanent under (d) above shall be based upon seniority and shall be effective on the effective date of consolidation or legislation.

CHAPTER 10. VIOLATIONS AND PENALTIES

4A:10-1.1 General provisions

(a) No person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C.

(b) No person or appointing authority shall fail to comply with an order of the Commissioner or Board.

(c) No person or appointing authority shall obstruct a person's lawful opportunity to participate in the selection and appointment process or a person's lawful pursuit of any remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(d) No person shall make any false statement or perform any fraudulent act in connection with any examination, certification, appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(e) No person shall pay, offer, solicit or accept any compensation, service or other consideration to affect any appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

1. No person shall pay or offer any compensation, service or other consideration to induce the retirement or resignation of an employee in order to gain a promotion or the opportunity for a promotion.

2. No person shall solicit or accept any compensation, service or other consideration as an inducement to retire or resign in order to allow an employee to gain a promotion or the opportunity for a promotion.

(f) Appointing authorities shall timely supply all information, documents and other materials requested by the Department of Personnel for the purpose of efficiently and accurately administering the merit system.

4A:10-1.2 Political activity

(a) No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See N.J.S.A. 11A:2-23.

(b) No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (> 5 U.S.C. 1501 et seq.):

1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

4A:10-2.1 General provisions

(a) Where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C., the Department of Personnel, Commissioner or Board shall conduct an investigatory hearing or other review, as appropriate. If a violation or noncompliance is found, the Commissioner or Board may:

1. Issue an order of compliance;
 2. Assess costs, charges and fines not to exceed \$10,000;
 3. Order the appointment of an eligible from an outstanding list;
 4. In State service, consolidate personnel functions;
 5. Initiate a civil action in the Superior Court;
 6. Recommend criminal prosecution; or
 7. Take other appropriate action pursuant to law or rule.
- (b) See N.J.A.C. 4A:10-3.1 and 3.2 for salary disapproval procedures.

4A:10-2.2 Failure to appoint from complete certification

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the Department of Personnel either by the date of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, the Commissioner may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.

2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commissioner for permission not to make a permanent appointment. The Commissioner may grant such petition, but may order the appointing authority to reimburse the Department for the costs of the selection process, provided, however, that when the jurisdiction in which the appointing authority is situated has agreed to the intergovernmental transfer pursuant to > N.J.A.C. 4A:4-7.1A of an employee into a title for which an open competitive or promotional list exists, the appointing authority may petition the Commissioner for a waiver of the costs of the selection process. The Commissioner shall notify the appointing authority of the amount of the reimbursement and provide an opportunity to respond to the assessment within 20 days of such notice.

(b) In addition to the actions which the Commissioner may take in (a) above, the Commissioner or Board may take any action set forth in > N.J.A.C. 4A:10-2.1. Prior to

any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

4A:10-2.3 Enforcement action

The Commissioner, the Board, or any resident or other party in interest may bring an action in the Superior Court for the enforcement of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or the Board. The Commissioner may join in any pending action.

4A:10-2.4 Criminal violation

It is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or Board.

4A:10-3.1 General provisions

(a) The Commissioner, the Board or an authorized representative of the Department of Personnel may disapprove and order the payment stopped of the salaries of any person employed in violation of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or Board, the individual with employment authority over such person and the person who authorizes payment of a disapproved salary.

(b) A notice of salary disapproval shall be given to the appointing authority, the affected employee and other persons whose salaries are to be disapproved.

1. The notice shall state the nature of the violation and provide the appointing authority, the affected employee and other affected persons 10 days to respond to the notice of salary disapproval.

2. A review conference may also be held at a time and location specified by the Department of Personnel.

(c) If the issue which required the notice of salary disapproval has not been resolved, a salary disapproval order shall be issued.

1. The order shall state the nature of the violation and require payment stopped to the affected employee.

2. The order may also require payment stopped to the individual with employment authority over such employee and the person who authorized payment of the disapproved salary.

3. The order shall be mailed to the appointing authority, the affected employee, the persons whose salaries have been disapproved and in State service, the Department of the Treasury.

4. The appointing authority, the affected employee and other persons whose salaries have been disapproved may appeal the order to the Merit System Board within 20 days of receipt of the order. See N.J.A.C. 4A:2-1.1 et seq., for appeal procedures.

5. If the violation has not been corrected and no appeal has been timely filed, the matter shall be referred to the Board for review and any appropriate action pursuant to law or rule.

4A:10-3.2 Penalties and remedies

(a) In salary disapproval matters, the Commissioner or the Board may:

1. Disapprove the payment of salary to an employee hired in violation of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.;

2. Disapprove the payment of salary to persons who have approved or continued the payment of a disapproved salary or persons who have employment authority over an employee whose salary has been disapproved;

3. Order the appointment of an eligible from an outstanding certification;

4. Revive an employment list;

5. Assess costs, charges or fines pursuant to > N.J.S.A. 11A:10-3;

6. Initiate a civil action in the Superior Court; and

7. Take other appropriate actions pursuant to law or rule.